SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 56

ALASKA STEAMSHIP COMPANY, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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NAMES AND ADDRESSES OF COUNSEL.

Messrs. BOGLE, BOGLE & GATES, Attorneys for Appellant,
609 Central Building, Seattle, Washington.

Messrs. ANTHONY SAVAGE and JEFFREY HEIMAN, Attorneys for Appellee,
310 Federal Building, Seattle, Washington.

[1*]

In the District Court of the United States, Western District of Washington, Northern Division.

No. 20,361.

ALASKA STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT.

Comes now the plaintiff, and for cause of action against the defendant alleges:

I.

That the plaintiff is now and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the

*Page number appearing at the foot of page of original certified Transcript of Record.

State of Nevada; that it is licensed to do business in the State of Washington, and has paid to the State of Washington its annual license fee last past due; that it is resident within the Western District of Washington, having its principal place of business in the City of Seattle, County of King, State of Washington.

II.

That the defendant is now and at all times hereinafter mentioned was a sovereign state.

III.

That the plaintiff is now and at all times hereinafter mentioned was the owner and operator of the following merchant vessels of the United States engaged as common carriers for hire, to wit: The SS. "Yukon" and the SS. "Depere," which said vessels were and now are operated by the plaintiff between the Port of [2] Seattle and ports in the Territory of Alaska.

IV.

That on or about the 15th day of December, 1929, the aforesaid SS. "Depere" was wrecked at or near Port McArthur in southeast Alaska. That the crew of said vessel, consisting of thirty men, was taken ashore at said Port McArthur and thence transported to Ketchikan, Alaska. That the United States Customs Office at Ketchikan, Alaska, was notified of said shipwreck and of the coming of the aforesaid crew to Ketchikan. That the United States Customs Office, acting through Mr. M. S. Dobbs, Deputy Collector of Customs at Ketchikan, took full charge of said shipwrecked crew upon

their arrival at Ketchikan, and provided subsistence for said crew until arrangements could be made for their transportation to the United States.

V.

That the aforesaid SS. "Yukon," belonging to the plaintiff, stopped in the Port of Ketchikan, Alaska, en route for Seattle, during the time when the shipwrecked crew of the SS. "Depere" was in the care of the United States Deputy Collector of Customs, M. S. Dobbs. That the said Deputy Collector of Customs, acting for and on behalf of the defendant, and in pursuance of the laws and regulations of the United States providing for the care of shipwrecked seamen, to wit: U. S. C. A., Title 46, Sections 678, 679, 680 and 681, requested and required the master of the said SS. "Yukon" to transport the aforesaid shipwrecked crew to Seattle, Washington, on board the SS. "Yukon." That the plaintiff was thereby required by force of the above cited statutes to take on board its vessel, the said SS. "Yukon," the aforesaid destitute seamen and to transport said destitute seamen to the United States: That on November 20, 1929, the said Deputy Collector of Customs, [3] acting for and on behalf of the defendant, agreed in writing with the said master of the SS. "Yukon" that compensation in the total sum of $397.20 should be paid by the defendant for the transportation of said crew of thirty men to the Port of Seattle, Washington. That the said Deputy Collector of Customs issued to the aforesaid master of the SS. "Yukon" a shipwrecked seamen's certificate, a

certified copy of which certificate, marked Exhibit "A," is hereto attached and by reference incorporated herein, and made a part of this complaint. That said certificate in part provides as follows:

> "I have agreed with the said master that upon presentation of this certificate at the Treasury Department, bearing an indorsement of the Collector of Customs at the Port of Seattle, Washington aforesaid that the seamen mentioned have been brought into his District by said vessel, he shall be entitled to receive the sum of Three hundred ninety seven & 20/100 dollars for their passage, being the sum of Thirteen and 24/100 dollars for each seaman.
>
> * * * * * * * *
>
> "Given under my hand and seal of office this 20th day of November, 1929.
>
> "M. S. DOBBS,
> "Deputy Collector of Customs."

VI.

That thereafter and in pursuance of the said request of the aforesaid United States Deputy Collector of Customs, and the aforesaid agreement between the master of the SS. "Yukon" and the aforesaid Deputy Collector of Customs, the said master took on board the SS. "Yukon" the shipwrecked crew of the SS. "Depere," consisting of thirty men, and sailed from Ketchikan, Alaska, for the Port of Seattle, Washington. That the aforesaid shipwrecked crew was transported to and

landed at the Port of Seattle on the 22d day of November, 1929, which fact is certified by the United States Collector of Customs of the Port of Seattle in a certificate [4] attached to the aforesaid Shipwrecked Seamen's Certificate, marked Exhibit "A" and attached hereto.

VII.

That thereafter, to wit, on the 2d day of December, 1929, the plaintiff sent to the Treasury Department of the United States Government a statement of the account owing to the plaintiff from the defendant in the sum of $397.20, together with the Destitute Seamen's Certificate above mentioned, properly endorsed by the Collector of Customs at Seattle, Washington, the aforesaid sum of $397.20 being the compensation owing to the plaintiff for the transportation of said shipwrecked crew as evidenced by the said Destitute Seamen's Certificate. That shortly thereafter the Comptroller General of the United States, on behalf of the defendant, unlawfully and arbitrarily refused to pay said compensation to the plaintiff, and arbitrarily placed upon the statutes above cited a wrongful and unlawful construction, and held that upon the facts as set forth herein the plaintiff was not entitled to the compensation as provided in Section 679 of Title 46, U. S. C. A., for the reason that the facts as herein set forth did not come within the meaning of said statutes, all of which action on the part of the Comptroller General was arbitrary and contrary to law. That the said ruling and the said refusal of the Comptroller General of the United

States to pay the claim of the plaintiff was embodied in a letter dated January 29, 1930, which letter, together with the aforesaid statement of the account sent to the Treasury Department of the defendant, is attached hereto, marked Exhibit "B" and made a part hereof. The aforesaid letter of the Comptroller General is as follows:

"SETTLEMENT CERTIFICATE
"GENERAL ACCOUNTING OFFICE
"CLAIMS DIVISION [5]
"Washington, D. C.

"January 29, 1930.

"Alaska Steamship Company
"Room 4, Pier 2,
"Seattle, Washington.

"Sirs:

"Your Claim No. 07502(1) for $397.20 on account of transportation on your SS. 'Yukon' furnished 30 shipwrecked seamen on the SS. 'Depere' owned and operated by your company, which was wrecked at Port McArthur, S. E. Alaska, November 15, 1929, has been carefully examined and it is found that no part thereof may be allowed for reasons hereinafter stated.

"The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator and where this duty has been undertaken the appropriation for the 'Relief and Protection of American Seamen' is not available to reimburse the owner or operator for the expense incurred in performing such duty.

"I therefore certify that no balance is found due you from the United States.

"Respectfully,

"J. R. McCARL,

"Comptroller General of the United States.

"By: (Signed) F. A. SHUMAKER."

VIII.

That the aforesaid action of the Comptroller General of the United States in refusing to pay the claim of the plaintiff as set forth herein constitutes an arbitrary and wrongful act; that the aforesaid ruling of the Comptroller General represented by the above-quoted letter is an arbitrary and unlawful construction and interpretation of the above-cited statutes, and that such construction and interpretation placed upon the said statutes by the Comptroller General is arbitrary and illegal in the following respects, to wit: It violates and contravenes the statutes of the United States expressly allowing conpensation to shipowners transporting [6] shipwrecked seamen to the United States, and making it the duty of the consular officers and commercial agents of the United States, and not of the owners of the shipwrecked vessel, to provide subsistence and transportation for the shipwrecked crew to some port in the United States; it renders said statutes unconstitutional and in violation of the Fifth Amendment of the Constitution of the United States, in that it results in a taking of property without just compensation or due process of law.

IX.

That although due demand has been made for the payment of the said claim and indebtedness aforesaid, the same has not, nor has any part thereof, been paid, and that the same is now due and owing from the defendant to the plaintiff.

WHEREFORE, plaintiff prays judgment against the defendant in the sum of $397.20, together with interest from the 29th day of January, 1930, until paid, together with plaintiff's costs and disbursements herein to be taxed.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff. [7]

EXHIBIT "A."

CERTIFICATE GIVEN BY CUSTOMS OFFICERS TO MASTERS OF VESSELS TRANSPORTING SHIPWRECKED AMERICAN SEAMEN TO THE UNITED STATES FROM ALASKA.

DEPARTMENT OF COMMERCE AND LABOR
BUREAU OF NAVIGATION.

Office of Deputy Collector of Customs,
Port of Ketchikan, Alaska,
November 20th, 1929.

I HEREBY CERTIFY that I have sent to Seattle, Washington, on board the American St. S. YUKON, of 3,638 tons burden, whereof C. A. Glasscock is master, the following shipwrecked American Seamen:

Name of Seamen.	Name of vessel on which they last served.	Home port of vessel and time and place of wreck.
As per list attached	Am. St. S. DEPERE (220449)	New York 7:55 P. M. November 15, 1929 Port McArthur, S. E. Alaska
John Johanson	Pilot	
George J. Decker	2nd Officer	
Robert Stevens	3rd Officer	
Aldon Forron	Seaman	
Rennie Brandon	"	
Fred Burns	"	
Alfred Sundby	"	

Name of Seamen.	Name of vessel on which they last served.	Home port of vessel and time and place of wreck.
Raymond Torris	Seaman	
George Hanson	"	
Robert Brazant	"	
Walter Houlton	"	
Arthur Howgate	Cargo Handler	
Ingvald Johansen	"	
William Martinsen	"	
Nels Christoffersen	Engineer	
John Karlson	"	
Wayne Davis	"	
Charles McDonald	Oiler	
Albert Vann	"	

Name of Seamen.	Name of vessel on which they last served.	Home port of vessel and time and place of wreck.
Gilbert Gonyeau	Oiler	
Murdock LeCain	Firemen	
Cornelius Vandermark	"	
George Angle	"	
Frank O'Neill	Wiper	
Geo. W. Parks	Purser	
John Schilling	Steward	
Joseph Jackson	Cook	
Wilford Edwards	Galley	
Jas. Caldwell	Messman	
James Ponte	Mess boy	
Total- 30		

I have agreed with the said master that upon presentation of this certificate at the Treasury Department, bearing an indorsement of the Collector of Customs at the port of Seattle, Washington, aforesaid that the seamen mentioned have been brought into his District by said vessel, he shall be entitled to receive the sum of Three hundred ninety seven & 20/100 dollars for their passage, being the sum of Thirteen and —— 24/100 dollars for each seaman. But if the voyage shall continue beyond the period of thirty days from the date of sailing, and it shall be so certified by the Collector of Customs, the said master shall be entitled to receive the sum of —— dollars for their passage, being the sum of —— dollars for each seaman.

And I further certify that the regular charge for steerage passage on said vessel from this port to Seattle, Washington, in the United States is $17.00, and that the distance is 662 miles.

Given under my hand and seal of office this 20th day of November, 1929.

[Seal] M. S. DOBBS,
Deputy Collector of Customs.

Office of the Collector of Customs,
Port of Seattle, Wash.
November 22, 1929.

I HEREBY CERTIFY, under seal of my office, that the seamen, to the number of 30, named in the above Customs certificate, have arrived within this District on the above-named vessel, of 3638 net tons burden, as per register, enrollment, or license on

file in this office, and that the voyage from Ketchikan, Alaska, covered a period of 2 days.

[Seal] OSCAR W. DAM,
Deputy Collector of Customs.

(Foregoing certificate bears following certificate stamped upon the face thereof:)

CUSTOMS HOUSE,
Ketchikan; Alaska.

I certify this is a true copy as appears by the records of this office.

(Sgd.) M. S. DOBBS,
Deputy Collector.

Date—March 10, 1930. [9]

EXHIBIT "B."

SETTLEMENT CERTIFICATE
GENERAL ACCOUNTING OFFICE
CLAIMS DIVISION.
Washington, D. C.

January 29, 1930.

Alaska Steamship Company,
Room 4, Pier 2,
Seattle, Washington.

Sirs:

Your Claim No. 07502(1) for $397.20 on account of transportation on your SS. "Yukon" furnished 30 shipwrecked seamen of the SS. "Depere" owned and operated by your company, which was wrecked at Port McArthur, S. E. Alaska, November 15, 1929, has been carefully examined and it is found that no part thereof may be allowed for reasons hereinafter stated.

The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator and where this duty has been undertaken the appropriation for the "Relief and Protection of American Seamen" is not available to reimburse the owner or operator for the expense incurred in performing such duty.

I therefore certify that no balance is found due you from the United States.

Respectfully,

J. R. McCARL,

Comptroller General of the United States.

By: F. A. SHUMAKER. [10]

Copy.

ALASKA STEAMSHIP COMPANY,

Room 4, Pier 2. Phone Main 4530.

Seattle, Washington.

December 2nd, 1929.

State Department,

Washington, D. C.

Transportation furnished to 30 wrecked seamen from the Am. ss DEPERE, Ketchikan to Seattle ex ss YUKON @ 13.24 each 397.20

[Endorsed]: Filed April 29, 1930. [11]

ANSWER.

Comes now the defendant United States of America, by Anthony Savage, United States Attorney for the Western District of Washington, and Jeffrey Heiman, Assistant United States Attorney

for said district, and for answer to the complaint of the plaintiff on file herein, answers, admits and denies as follows:

I.

In answer to Paragraph I of plaintiff's complaint, defendant admits the same.

II.

In answer to Paragraph II of plaintiff's complaint, defendant admits the same.

III.

In answer to Paragraph III of plaintiff's complaint, defendant denies each and every allegation contained therein.

IV.

In answer to Paragraph IV of plaintiff's complaint, defendant denies each and every allegation contained therein.

V.

In answer to Paragraph V of plaintiff's complaint, defendant denies each and every material allegation contained therein. [12]

VI.

In answer to Paragraph VI of plaintiff's complaint, defendant denies each and every material allegation contained therein.

VII.

In answer to Paragraph VII of plaintiff's complaint, defendant denies each and every material allegation contained therein, except that it admits

sending the letter set out in said paragraph signed by the Comptroller General of the United States.

VIII.

In answer to Paragraph VIII of plaintiff's complaint, defendant denies each and every material allegation contained therein.

IX.

In answer to Paragraph IX of plaintiff's complaint, defendant denies each and every material allegation contained therein.

WHEREFORE, having fully answered the complaint of the plaintiff herein, the defendant prays that this cause of action be dismissed and that it have and recover its costs and disbursements to be taxed herein.

ANTHONY SAVAGE,
United States Attorney.
JEFFREY HEIMAN,
Assistant United States Attorney.

Filed June 25, 1931. [13]

STIPULATION WAIVING JURY TRIAL.

IT IS HEREBY STIPULATED by and between the parties to the above-entitled cause that a jury in said cause be, and the same is hereby waived.

BOGLE, BOGLE & GATES,
Attorneys for Plf.
ANTHONY SAVAGE,
U. S. Atty.
JEFFREY HEIMAN,
Asst. U. S. Atty.

Filed Feb. 24, 1932. [14]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 20,361.

ALASKA STEAMSHIP COMPANY, a Corporation,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

JUDGMENT OF DISMISSAL.

This cause having heretofore come on for hearing and the motion of the defendant for judgment having heretofore been granted, now therefore,

IT IS ORDERED, ADJUDGED AND DECREED that this cause be, and the same is hereby dismissed and the defendants awarded judgment against the plaintiff for its costs and disbursements herein to be taxed.

To the foregoing and each and every part thereof the plaintiff excepts and its exception is allowed.

Done in open court this 12 day of April, 1932.

JEREMIAH NETERER,

Judge.

Filed Apr. 11, 1932. [15]

NOTICE OF APPEAL.

To ANTHONY SAVAGE, United States Attorney, and JEFFREY HEIMAN, Assistant United States Attorney:

NOTICE IS HEREBY GIVEN that the plaintiff and appellant Alaska Steamship Company hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment of dismissal entered herein on the 21st day of March, 1932, and from each and every part thereof, and from each and every adverse ruling in the above-entitled cause.

ALASKA STEAMSHIP COMPANY, a Corporation,

By BOGLE, BOGLE & GATES,

Its Attorneys.

Copy rec'd April 11th, 1932.

JEFFREY HEIMAN,

Asst. U. S. Atty.

Filed April 11, 1932. [16]

PETITION FOR APPEAL.

To the Honorable JEREMIAH NETERER, District Judge:

The above-named plaintiff feeling aggrieved by the judgment of dismissal rendered and entered in the above-entitled cause on the 11th day of April, 1932, does hereby appeal from said judgment of

dismissal and each and every part thereof, and from each and every adverse ruling made in the above-entitled cause, to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and it prays that its appeal be allowed, and that citation be issued as provided by law and that a transcript of the record, proceedings and documents upon which said judgment of dismissal was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit, under the rules of said court in such cases made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of it, be made.

ALASKA STEAMSHIP COMPANY a Corporation,

Plaintiff and Appellant.

By BOGLE, BOGLE & GATES,

Its Attorneys. [17]

ORDER ALLOWING APPEAL AND FIXING BOND.

Appeal allowed upon giving bond as required by law for the sum of $500.

Done in open court this 12 day of April, 1932.

JEREMIAH NETERER,

District Judge.

Filed Apr. 11, 1932. [18]

ASSIGNMENTS OF ERROR.

Now comes the plaintiff in the above-entitled cause and files its assignments of error upon which it relies upon the prosecution of the appeal in the above-entitled cause from the judgment of dismissal made by this Honorable Court on the 11th day of April, 1932:

1. That the United States District Court for the Western District of Washington, Northern Division, erred in holding that the plaintiff was not entitled to recover from the defendant the agreed compensation for the transportation of the shipwrecked crew of the steamship "Depere" on board the steamship "Yukon" from Ketchikan, Alaska, to the port of Seattle, Washington, the port of shipment of said crew, in pursuance of the shipwrecked seamen's certificate issued by M. S. Dobbs, Deputy Collector of Ketchikan, Alaska, to Captain Charles A. Glasscock, Master of the steamship "Yukon" wherein it was agreed that the defendant would pay said compensation to the plaintiff.

2. That the court erred in holding that the following provision of the Shipping Articles of the steamship "Depere," which said provision is prescribed and laid down by law in [19] § 713 of Title 46, U. S. C., required the plaintiff to return the crew of said vessel to the port of Seattle, irrespective and without regard to whether or not said vessel was shipwrecked and became totally disabled and unable to navigate or complete her voyage:

"It is agreed between the Master and seamen, or mariners, of the S. S. 'Depere' of New York, N. Y., of which J. Newland is at present Master, or whoever shall go for Master, now bound from the port of Seattle, Wash. to Ketchikan, Alaska, and such other ports and places in any part of Alaska and B. C., as the Master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding two calendar months."

3. That the said court erred in failing to hold that the above quoted provision from the Shipping Articles of the steamship "Depere" prescribed and laid down by § 713, was not restricted, limited and modified by and subject to § 593, Title 46, U. S. C., which provides that in case of shipwreck the wages of seamen shall terminate and said seamen shall be transported back to the port of shipment as provided by §§ 678, 679 and 681 of Title 46 U. S. C.

4. That said court erred in holding that the aforesaid shipping articles imposed upon the shipowner the obligation to return shipwrecked seamen to the port of shipment, notwithstanding §§ 593, 678, 679, 680 and 681 of Title 46, U. S. C., all in chapter 18 of said Title 46, containing the law of this country relative to merchant seamen.

5. That said court erred in holding that the above quoted articles of the steamship "Depere" constituting an agreement between the Master of said vessel and the crew thereof, imposed an obligation on the owner of said vessel to return said seamen to the port of Seattle after the completion of

the voyage of the steamship "Depere" was rendered impossible by the wreck of the vessel. [20]

6. That the court erred in failing to hold that said shipwrecked seamen were shipwrecked and destitute seamen within the meaning of the above cited sections of Title 46, at all times after the steamship "Depere" was wrecked near Cape Decision, Alaska, and in failing to hold that said seamen were thereafter charges of the Government and were entitled to the benefit of the Act for the Relief and Protection of American Seamen at all times after being brought to the port of Ketchikan, Alaska, until they were transported to the port of Seattle, Washington, in pursuance of and in accordance with the above-cited sections of Title 46.

7. That said court erred in holding that upon being delivered to the master of the steamship "Yukon" at Ketchikan, the aforesaid shipwrecked seamen ceased to be destitute seamen within the meaning of said sections 593, 678, 679, 680 and 681 of Title 46.

8. That said court erred in holding that the plaintiff was obligated to return the shipwrecked seamen of the steamship "Depere" to the port of Seattle, notwithstanding the issuance of a shipwrecked seamen's certificate by the Deputy Collector of Customs at Ketchikan, Alaska, to the master of plaintiff's vessel "Yukon," wherein it was agreed on the part of the defendant that compensation would be paid to plaintiff by the defendant for transporting said seamen to the port of Seattle, and in holding that the issuance of said certificate and the execution of

said agreement by and between the Deputy Collector of Customs at Ketchikan, Alaska, and Captain Glasscock of the steamship "Yukon," gave no right to the plaintiff company for compensation out of the destitute seamen's fund.

9. That the said court erred in entering judgment of dismissal.

10. That the said court erred in denying plaintiff's and [21] appellant's motion for the entry of its proposed findings of fact and conclusions of law.

11. That the said court erred in refusing to make any special findings of fact and conclusions of law other than those embodied in its memorandum decision.

12. That the said court erred in denying plaintiff's and appellant's motion for judgment in its favor.

13. That the said court erred in granting defendant's and appellee's motion to dismiss plaintiff's and appellant's action, and granting judgment in defendant's and appellee's favor.

WHEREFORE plaintiff and appellant prays that said judgment of dismissal be reversed, and that said District Court for the Western District of Washington, Northern Division, be ordered to enter judgment and decree reversing the decision of judgment of dismissal of the lower court in said cause.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff and Appellant.

Filed April 11, 1932. [22]

COST BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS: That we, Alaska Steamship Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada licensed to do business in the State of Washington, as principal, and Pacific Indemnity Company, a corporation duly incorporated under the laws of the State of California and authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto the United States of America, defendant in the above-entitled cause, in the full sum of Five Hundred Dollars ($500), lawful money of the United States to be paid to it, to which payment well and truly to be made we bind ourselves jointly and severally, and our successors and assigns, by these presents.

Sealed with our seals and dated this 6th day of May, 1932.

WHEREAS, the above-named principal has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment of dismissal of the United States District Court for the Western District of Washington, Northern Division, made and entered on the 11th day of April, 1932. [23]

NOW, THEREFORE, the condition of this obligation is such that if the above-named principal shall prosecute its said appeal to effect, and if it fail to make its plea good shall answer all costs, then this

obligation shall be void; otherwise to remain in full force and effect.

ALASKA STEAMSHIP COMPANY, a Corporation,

[Seal] By W. T. FORD,
Secretary,
Principal.

PACIFIC INDEMNITY COMPANY, a Corporation,

[Seal] By CASSIUS E. GATES,
Its Attorney-in-fact,
Surety.

State of Washington,
County of King,—ss.

On this 6th day of May, 1932, before me personally appeared W. T. Ford, to me known to be the Secretary of the Alaska-Steamship Company, the corporation that executed the within and foregoing instrument as principal, and acknowledged the said instrument to be the free and voluntary act and deed of said principal for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for and on its behalf, and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] EDWARD G. DOBRIN,
Notary Public in and for the State of Washington,
Residing at Seattle. [24]

State of Washington,
County of King,—ss.

On this 6th day of May, 1932, before me personally appeared Cassius E. Gates, to me known to be the attorney-in-fact of the corporation that executed the within and foregoing instrument as surety, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument, and that the seal affixed thereto is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal] EDWARD G. DOBRIN,
Notary Public in and for the State of Washington,
Residing at Seattle.

The foregoing bond and the sufficiency of the surety thereon is approved as a cost bond on appeal.

Dated this 7th day of May, 1932.

NETERER,
District Judge.

Received a copy of the within cost bond this 7 day of May, 1932.

ANTHONY SAVAGE,
Attorney for Deft.

Filed May 7, 1932. [25]

[Title of Court and Cause.]

ORDER TRANSMITTING EXHIBITS.

It is ORDERED, ADJUDGED AND DECREED that the original exhibits in this cause be transmitted to the Circuit Court of Appeals with the transcript of record on appeal.

Done in open court this 11th day of April, 1932.

JEREMIAH NETERER,
District Judge.

Presented by:

NORMAN M. LITTELL,
Of Bogle, Bogle & Gates.

OK.—JEFFREY HEIMAN,
Asst. U. S. Atty.

Filed April 11, 1932. [26]

ORDER EXTENDING TIME TO AND INCLUDING APRIL 11, 1932, FOR FILING BILL OF EXCEPTIONS.

This matter having come on for hearing upon motion of the attorneys for the plaintiff Messrs. Bogle, Bogle & Gates, for an order extending the time within which to file its bill of exceptions to the decision and ruling of the court in the above-entitled cause, and it appearing to the court that the rules of this court require the filing of the bill of exceptions on or before April 1, 1932, and that attorneys for plaintiff require additional time in which to ex-

amine the records of this case and prepare their bill of exceptions, and that ten days' additional time will be sufficient for this purpose; now, therefore,

It is ORDERED, ADJUDGED AND DECREED that the time for filing a bill of exceptions in the above-entitled cause be and the same hereby is extended until April 11, 1932.

Done in open court this 29 day of March, 1932.

JEREMIAH NETERER,
Judge.

The foregoing order is approved by

ANTHONY SAVAGE,
U. S. District Attorney.
By TOM DE WOLFE,
Asst. U. S. Dist. Atty.

Presented by:

GEORGE T. NICKELL,
Of Bogle, Bogle & Gates.

Filed Mar. 29, 1932. [27]

PLAINTIFF'S BILL OF EXCEPTIONS.

BE IT REMEMBERED: That heretofore, to wit, on the 24th day of February, 1932, the above-entitled cause came on for trial at Seattle, Washington, in the United States District Court for the Western District of Washington, Northern Division, upon the issues joined herein before the Honorable Jeremiah Neterer, sitting as Judge of said court, without a jury, a jury having been duly waived by the parties by a written stipulation in the words and figures as follows, to wit:

"STIPULATION.

"It is hereby STIPULATED by and between the parties to the above-entitled cause that a jury in said cause be, and the same is hereby waived.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff.
ANTHONY SAVAGE,
By JEFFREY HEIMAN,
Assistant United States Attorney,
Attorneys for Defendant."

Whereupon the plaintiff respectfully offered and introduced the following evidence and exhibits of evidence, all of which were admitted without objection:

Plaintiff's Exhibit 1—A chart of the Territorial Waters of Alaska in the vicinity of Cape Decision. [28]

Plaintiff's Exhibits 2-3-4-5 and 6—Pictures showing wreck of beached vessel.

Plaintiff's Exhibit 7—Photostatic copy of shipwrecked seamen's certificate issued by the Deputy Collector of Customs at Ketchikan, Alaska, to Captain Charles A. Glasscock, of the steamship "Yukon," authorizing transportation of shipwrecked seamen to Seattle, Washington; also statement of agreed compensation sent to the Treasury Department of the United States Government by the Alaska Steamship Company demanding payment of compensation for transportation of shipwrecked seamen on the steamship "Yukon" to the Port of Seattle; also letter dated January 29, 1930, from J. R. Mc-

Carl, Comptroller General of the United States, to the Alaska Steamship Company, refusing to pay said compensation.

Defendant's Exhibit 1—Chart of Alaskan Waters.

And thereupon the plaintiff to maintain the issues of its part, introduced the following evidence, to wit:

I.

Captain John Newland, Mr. George J. Decker, Mr. Robert R. Stevens and Mr. George W. Parks, testified that said witnesses, respectively, in the order named, were the master, the second mate, the third mate and the purser of the plaintiff's steamship "Depere" in November, 1929. That on November 15, 1929, while said vessel was en route from Cordova to Ketchikan, Alaska, she struck a rock just off of Cape Decision, Alaska, at a point indicated as "X" on the chart marked Plaintiff's Exhibit 1. That said vessel began to fill with water and it was necessary, to save the vessel and crew, to beach said vessel at point "D" marked on Plaintiff's Exhibit 1. That said vessel was totally disabled and unable to complete her voyage and that all of the crew went ashore in the lifeboats at a point near the beached vessel. That the said steamship "Depere" was left in the position indicated in Plaintiff's Exhibits 2, 3, 4, 5 and 6. [29]

II.

That witnesses George J. Decker, Robert R. Stevens and George W. Parks testified that on the next day, to wit, on November 16, 1929, in response to radio messages which had been sent out from the

steamship "Depere" at the time of the above-described wreck, the United States Coast Guard cutter "Saigon" came to the position of the wreck and took aboard the crew of the steamship "Depere," to wit, thirty (30) men, and transported said crew to the Port of Ketchikan, Alaska, where they were landed on November 17, 1929.

III.

That George J. Decker, Robert R. Stevens and George W. Parks testified that they were landed together with the remainder of the crew of the steamship "Depere" in the total number of thirty men at the Port of Ketchikan, Alaska, as aforesaid, and that M. S. Dobbs, Deputy Collector of Customs of the United States Government in the Port of Ketchikan, took full charge of said shipwrecked crew and provided each and every man thereof with lodgings and sustenance until such times as said M. S. Dobbs could procure their shipment back to the Port of Seattle. That all of said crew remained in the Port of Ketchikan from November 17 until November 20. That at all times during said period the aforesaid M. S. Dobbs, Deputy Collector of Customs, acting for and on behalf of the defendant and at the defendant's expense, paid all living expenses of each and every member of the aforesaid crew.

IV.

That Captain Charles A. Glasscock and Joseph L. Large testified that they were, respectively, master and purser of the steamship "Yukon," a vessel belonging to the plaintiff, in the month of November,

1929, and that on the 20th day of November, 1929, said vessel stopped at the Port of Ketchikan, Alaska, en route for [30] the Port of Seattle, on her regular course. That the aforesaid M. S. Dobbs requested and demanded of said Captain Glasscock that he transport the aforesaid shipwrecked crew to the Port of Seattle, Washington, and issued to said Captain Glasscock a shipwrecked seamen's certificate authorizing said transportation and agreeing to pay therefore the compensation stated therein. That said shipwrecked seamen's certificate is in words and figures as follows, to wit:

"CERTIFICATE GIVEN BY CUSTOMS OFFICERS TO MASTERS OF VESSELS TRANSPORTING SHIPWRECKED AMERICAN SEAMEN TO THE UNITED STATES FROM ALASKA.

DEPARTMENT OF COMMERCE AND LABOR,
BUREAU OF NAVIGATION.

Office of Deputy Collector of Customs,
Port of Ketchikan, Alaska,
November 20th, 1929.

I HEREBY CERTIFY that I have sent to Seattle, Washington, on board the American St. S. YUKON, of 3638 tons burden, whereof C. A. Glasscock is master, the following shipwrecked American seamen:

Name of Seamen.	Name of vessel on which they last served.	Home port of vessel and time and place of wreck.
As per list attached	Am. St. S. DEPERE (220449)	New York 7:55 P. M. November 15, 1929 Port McArthur, S. E. Alaska
John Johanson	Pilot	
George J. Decker	2nd Officer	
Robert Stevens	3rd Officer	
Aldon Forron	Seaman	
Rennie Brandon	Seaman	
Fred Burns	Seaman	
Alfred Sundby	Seaman	
Raymond Torris	Seaman	

Name of Seamen.	Name of vessel on which they last served.	Home port of vessel and time and place of wreck.
George Hanson	Seaman	
Robert Brazant	Seaman	
Walter Houlton	Seaman	
Arthur Howgate	Cargo Handler	
Ingvald Johansen	Cargo Handler	
William Martinsen	Cargo Handler	
Nels Christoffersen	Engineer	
John Karlson	Engineer	
Wayne Davis	Engineer	
Charles McDonald	Oiler	
Albert Vann	Oiler	

Name of Seamen.	Name of vessel on which they last served.	Home port of vessel and time and place of wreck.
Gilbert Gonyeau [31]	Oiler	
Murdock LeCain	Fireman	
Cornelius Vandermark	Fireman	
George Angle	Fireman	
Frank O'Neill	Wiper	
George W. Parks	Purser	
John Schilling	Steward	
Joseph Jackson	Cook	
Wilford Edwards	Galley	
Jas. Caldwell	Mess Man	
James Ponte	Mess Boy	
Total 30		

I have agreed with the said master that upon presentation of this certificate at the Treasury Department, bearing an indorsement of the Collector of Customs at the port of Seattle, Washington, aforesaid that the seamen mentioned have been brought into his District by said vessel, he shall be entitled to receive the sum of Three Hundred Ninety-seven & 20/100 Dollars for their passage, being the sum of Thirteen and 24/100 for each seaman. But if the voyage shall continue beyond the period of thirty days from the date of sailing, and it shall be so certified by the Collector of Customs, the said master shall be entitled to receive the sum of —— dollars for their passage, being the sum of —— dollars for each seaman.

And I further certify that the regular charge for steerage passage on said vessel from this port to Seattle, Washington, in the United States is $17.00, and that the distance is 662 miles.

Given under my hand and seal of office this 20th day of November, 1929.

M. S. DOBBS,
Deputy Collector of Customs.

Office of the Collector of Customs,
Port of Seattle, Washington,
November 22, 1929.

I HEREBY CERTIFY, under seal of my office, that the seamen, to the number of 30, named in the above Customs certificate, have arrived within this District on the above named vessel, of 3638 net tons burden, as per register, enrollment, or license on file

in this office, and that the voyage from Ketchikan, Alaska, covered a period of 2 days.

[Seal] OSCAR W. DAM,
Deputy Collector of Customs."

being part of Plaintiff's Exhibit 7.

V.

That the said Captain Glasscock and the said Joseph L. Large testified that the shipwrecked crew of the steamship "Depere" [32] were taken aboard the steamship "Yukon" on November 20, 1929, at the Port of Ketchikan, Alaska, in pursuance of and in obedience to the demand of the aforesaid M. S. Dobbs, and in consideration of the shipwrecked seamen's certificate above set forth, and that said crew was thereupon transported to the port of Seattle, Washington, at which port they were landed on November 22, 1929. That George W. Parks testified that the port of Seattle was the port of shipment for all of the aforesaid crew of the steamship "Depere" in the total number of thirty men, and that each of said crew had signed on the steamship "Depere" at Seattle, Washington.

VI.

That Mr. W. T. Ford testified that he was the auditor of the Alaska Steamship Company at all times hereinabove mentioned. That he had forwarded the aforesaid shipwrecked seamen's certificate to the Comptroller General of the United States with the demand for payment of the compensation therein agreed upon, to wit, the sum of Three Hun-

dred Ninety-seven and 20/100 Dollars ($397.20). That Mr. J. R. McCarl, Comptroller General of the United States, wrote a letter to the plaintiff on January 20, 1930, refusing to pay said compensation, said letter being in words and figures as follows, to wit:

"SETTLEMENT CERTIFICATE
GENERAL ACCOUNTING OFFICE
CLAIMS DIVISION
Washington, D. C.

January 20, 1930.

Alaska Steamship Company,
Room 4, Pier 2,
Seattle, Washington.

Sirs:

Your claim No. 070502(1) for $397.20 on account of transportation on your S.S. 'Yukon' furnished 30 shipwrecked seamen of the S.S. 'Depere' owned and operated by your company, which was wrecked at Port McArthur, S.E. Alaska, November 15, 1929, has been carefully examined and it is found that no part thereof may be allowed for reasons hereinafter stated.

The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator and where this duty has been undertaken the appropriation for the [33] "Relief and Protection of American Seamen" is not available to reimburse the owner or operator for the expense incurred in performing such duty.

I therefore certify that no balance is found due you from the United States.

Respectfully,

J. R. McCARL,

Comptroller General of the United States.

By: F. A. SHUMAKER."

Mr. Ford further testified that he had been in the employ of the Alaska Steamship Company for twenty-one or twenty-two years; that he had known of a number of cases in which seamen shipwrecked in the Territorial Waters of Alaska had been taken to Alaskan ports and shipped to the United States at the expense of the Government. That in three of such cases, to wit, in the cases of the shipwrecks of the steamship "Portland," the steamship "Olympia," and the steamship "Mariposa," the first two being shipwrecked in 1909 or 1910, and the last being wrecked in 1918, the crews of said vessels after being taken to an Alaskan port had been shipped to the United States port of Seattle upon the issuance by a Deputy Collector of Customs of a shipwrecked seamen's certificate upon the form set forth above, and that in each of said cases the compensation agreed upon in said certificate had been paid by the Government. That each of said wrecked vessels had belonged to the Alaska Steamship Company, and in each case the shipwrecked crew of said vessel had been shipped back to the Port of Seattle upon another vessel belonging to the Alaska Steamship Company upon the issuance of the shipwrecked seamen's certificate as aforesaid, and that in each of said cases notwithstanding the fact that both the

wrecked vessel and the vessel transporting the ship wrecked crew to Seattle were owned by the Alaska Steamship Company, the compensation agreed upon had been paid by the Government. [34]

VII.

Mr. Oscar W. Dam testified that he was Deputy Collector of Customs in charge of the Marine Division of the United States Customs office in the Port of Seattle, Washington. That he had occupied said position since 1919. That the Customs Regulations require the Customs officials in Alaska to make an agreement with the master of a vessel bound for the Port of Seattle for the transportation of shipwrecked seamen in an Alaskan port, and to arrange for the transportation of said seamen to the United States. That it has been the established practice of the Customs officials acting under the aforesaid Regulations to issue shipwrecked seamen's certificates for the transportation of shipwrecked seamen in Alaska to the United States. That in accordance with said regulations the witness, as Deputy Collector of Customs in the Port of Seattle, examined said certificate upon the arrival of the transporting vessel in the Port of Seattle, checked the number of seamen returned and certified on the bottom of said certificate in each case that said shipwrecked seamen had been landed at said port, said practice being in accordance with the Regulations of the Department of Commerce. Mr. Dam further testified that he had verified the arrival of the crew of the steamship "Depere" on board the steamship "Yukon" on November 2, 1929, in the Port of Seattle, and had certified

to their arrival on the bottom of said certificate, his signature appearing at the bottom of said certificate in Plaintiff's Exhibit 7. Mr. Dam further stated that he had in hand a record of all shipwrecked seamen landed at the Port of Seattle since 1919, and that all of said seamen had been sent to Seattle in pursuance of shipwrecked seamen's certificates issued by a Collector or Deputy Collector of Customs in an Alaskan port. [35]

Whereupon the plaintiff rested, and the defendant stating that it had no testimony or evidence to submit, challenged the legal sufficiency of the evidence offered by and on behalf of the plaintiff and moved to dismiss the action. Thereupon the court took said motion under advisement and the plaintiff then moved the court for the entry of its proposed findings of fact and conclusions of law and for judgment in favor of the plaintiff and thereupon submitted the following proposed findings of fact and conclusions of law: [36]

FINDINGS OF FACT.

I.

That the plaintiff is now and at all times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of Nevada; that it is licensed to do business in the State of Washington and has paid thereto its annual license fee last past due; that it is resident within the Western District of Washington, having its principal place of business in the City of Seattle, County of King, State of Washington.

II.

That the defendant is now and at all times herein *mention* was a sovereign state.

III.

That the plaintiff is now and at all times hereinafter mentioned was the owner and operator of the following merchant vessels of the United States engaged as common carriers for hire, to wit: The SS. "Yukon" and the SS. "Depere," which said vessels were and now are operated by the plaintiff between the Port of Seattle and ports in the Territory of Alaska.

IV.

That on or about the 15th day of November, 1929, the aforesaid SS. "Depere," while nearing Cape Decision, Alaska, struck a submerged rock which stove a hole in the bottom of the vessel and permitted water to flow rapidly into said vessel. That the said vessel was thereafter in extreme danger and it was necessary to beach the vessel to prevent her from sinking with the possible loss of lives, vessel and cargo. That the master of the vessel caused her to be steered around Cape Decision toward Port McArthur just north of said cape to secure a safe place to beach the vessel. That said vessel was rapidly filling with water and it was impossible to reach the inlet entitled Port McArthur and it was necessary to run said vessel upon the shore between Cape Decision and Port McArthur. That after the SS. "Depere" was beached [37] at said point, the water continued to flow into her hold, and she settled upon

the bottom and was totally unmanageable and incapable of continuing upon her voyage. That in the judgment of her officers it was impossible for said vessel to complete her voyage to Seattle or navigate to any other point, and that it was to them uncertain whether or not said vessel could be salvaged or removed from the position in which she lay. That the crew of said ship went ashore in the lifeboats, taking provisions with them. That the wireless operator sent messages from the radio room of the SS. "Depere" requesting help, which room being in the upper portion of the vessel remained above water, and that in response thereto on the following day a United States coast guard cutter, the SS. "Saigon," came to the scene of the wreck and took aboard the shipwrecked seamen. That the said SS. "Saigon" transported the shipwrecked crew to Ketchikan, Alaska. That upon the arrival of said crew in Ketchikan, Alaska, the United States Customs Office for and on behalf of the defendant, acting through Mr. M. S. Dobbs, Deputy Collector of Customs at Ketchikan, took full charge of said shipwrecked crew, provided hotel accommodations for them at the expense of the defendant and provided subsistence for said crew during such time as they should remain in Ketchikan until arrangements could be made for their transportation to the United States.

V.

That the aforesaid SS. "Yukon," belonging to the plaintiff, stopped in the Port of Ketchikan, Alaska, *en route* for Seattle, during the time when the ship-

wrecked crew of the SS. "Depere" was in the care of the United States Deputy Collector of Customs, M. S. Dobbs. That the said Deputy Collector of Customs, acting for and on behalf of the defendant, and in pursuance of the [38] laws and regulations of the United States providing for the care of shipwrecked seamen, to wit: U.S.C.A., Title 46, sections 678, 679, 680 and 681, requested and required the master of the said SS. "Yukon" to transport the aforesaid shipwrecked crew to Seattle, Washington, on board the SS. "Yukon." That on November 20, 1929, the said Deputy Collector of Customs, acting for and on behalf of the defendant, agreed in writing with the said master of the SS. "Yukon" that compensation in the total sum of $397.20 should be paid by the defendant for the transportation of said crew of thirty men to the Port of Seattle, Washington. That the said Deputy Collector of Customs issued to the aforesaid master of the SS. "Yukon" a shipwrecked seamen's certificate, a photostatic copy of the original of said certificate having been admitted in evidence as Plaintiff's Exhibit No. 7.

VI.

That it was the established practice of the defendant for a period of many years prior to the shipwreck hereinabove mentioned, to wit, not later than the beginning of the present century, to transport from Alaskan ports seamen shipwrecked in Alaskan waters to the port of Seattle, Washington, at the expense of the defendant, whenever such transportation was authorized by a shipwrecked seamen's

certificate issued by a Collector of Customs or a Deputy Collector of Customs in Alaskan ports. That on many occasions within the period of years above indicated, the plaintiff herein has transported on one or another of its vessels plying between Seattle and Alaskan ports, the seamen of various vessels wrecked in Alaskan waters, upon the demand of the aforesaid Customs officers, and upon the issuance of the aforesaid shipwrecked seamen's certificates to the master of plaintiff's vessel or vessels, and that in each of such instances, the defendant [39] acting through the Comptroller General of the Treasury, has paid the amount of compensation agreed upon in said certificate upon demand of the plaintiff, and at no time prior to this instance has payment of said compensation to the plaintiff been refused. That on not less than three occasions within the aforesaid period the plaintiff Steamship Company has transported from an Alaskan port to Seattle, upon the demand of a customs official and upon issuance of a shipwrecked seamen's certificate, as in the instant case, shipwrecked seamen who had served upon a vessel owned by the plaintiff which had been wrecked in Alaskan waters, and in each of said instances compensation was paid by the defendant as specified in said certificate upon demand being made therefor upon the defendant. That it was the practice of the Department of Commerce of the United States Government during the aforesaid period of years prior to the shipwreck hereinabove described, to regard seamen of American vessels shipwrecked in Alaskan waters as destitute seamen within the

meaning of sections 593, 678, 679, 680 and 681 of U.S.C. Title 46, and that said Department of Government supplied its agents and the agents of the defendant, to wit, the Customs officials in Alaska, with printed forms entitled:

"CERTIFICATE GIVEN BY CUSTOMS OFFICERS TO MASTERS OF VESSELS TRANSPORTING SHIPWRECKED AMERICAN SEAMEN TO THE UNITED STATES FROM ALASKA.

DEPARTMENT OF COMMERCE AND LABOR, BUREAU OF NAVIGATION."

and instructed said agents to arrange for the transportation to the United States of the shipwrecked seamen by issuing said certificates to the masters of the vessels bound for the United States, requiring them to transport said seamen to the United States for a compensation agreed upon in said certificates as provided by the aforesaid sections of the U. S. Code. That it was likewise the [40] practice of the Comptroller General of the United States during said period to pay out and disburse from the "Appropriation for the Relief and Protection of American Seamen," upon presentation of the aforesaid shipwrecked seamen's certificate to the Treasury Department of the United States, the sums agreed to be paid in said certificates for the transportation of shipwrecked seamen from Alaskan ports to the United States, as specified in §§ 679, 680 and 681 of Title 46, U. S. C.

VII.

That on the 2d day of December, 1929, the plaintiff sent to the Treasury Department of the United States Government a statement of the account claimed to be owing to the plaintiff from the defendant in the sum of $397.20, together with the destitute seamen's certificate above mentioned properly endorsed by the Collector of Customs of Seattle, Washington, the aforesaid sum of $397.20 being the compensation specified in said certificate and in § 680, Title 46, U. S. C., for the transportation of said shipwrecked seamen to the Port of Seattle. That shortly thereafter the Comptroller General of the United States on behalf of the defendant refused to pay said compensation to the plaintiff, upon the grounds and for the reasons stated in his letter of January 29, 1930, to the plaintiff, a true copy of which said letter being set forth below:

"Washington, D. C.,
"January 29, 1930.

"Alaska Steamship Company,
"Room 4, Pier 2,
"Seattle, Washington.

"Sirs:

"Your Claim No. 07502(1) for $397.20 on account of transportation on your SS. 'Yukon' furnished 30 shipwrecked seamen of the SS. 'Depere' owned and operated by your company, which was wrecked at Port McArthur, S. E. Alaska, November 15, 1929, has been carefully examined and it is found that no

part thereof may be allowed for reasons hereinafter stated.

"The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator and where this duty has been undertaken the appropriation [41] for the 'Relief and Protection of American Seamen' is not available to reimburse the owner or operator for the expense incurred in performing such duty.

"I therefore certify that no balance is found due you from the United States.

"Respectfully,

"J. R. McCARL,

"Comptroller General of the United States.

"By: (Sgd.) F. A. SHUMAKER."

That the defendant at all times after sending the above-quoted letter refused and does now refuse to pay the sum of $397.20, the compensation agreed upon in the aforesaid shipwrecked seamen's certificate, for the transportation of the shipwrecked crew of the SS. "Depere" to the Port of Seattle.

VIII.

That the shipping articles of the SS. "Depere" upon the voyage on which said vessel was wrecked as above set forth provided as follows:

> "It is agreed between the Master and seamen, or mariners, of the SS. 'Depere' of New York, N. Y., of which J. Newland is at present Master, or whoever shall go for Master, now bound from the port of Seattle, Wash. to Ketchikan, Alaska, and such ports and places in any

part of Alaska and B. C., as the Master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding two calendar months."

Done in open court this 12 day of February, 1932.

JEREMIAH NETTERER,
District Judge. [42]

From the foregoing findings of fact, the Court states the following

CONCLUSIONS OF LAW.

I.

That § 593 of Title 46, U. S. C., § 4526 R. S., applies to the loss or wreck of a vessel in the waters of the noncontiguous Territory of Alaska as well as to the loss or wreck of vessels in foreign waters or countries, and that the seamen of vessels wrecked on the shores of the Territory of Alaska or in the Territorial Waters of Alaska, are destitute seamen within the meaning of said section.

II.

That §§ 678, 679, 680 and 681 of Title 46, U. S. C., apply to seamen shipwrecked in the Territory of Alaska or in the territorial waters of Alaska with the same force and effect as they apply to seamen shipwrecked in foreign lands, and that said sections together with § 593 construed in conjunction with the appropriation acts "For the Relief and Protection of American Seamen in * * * the Territory of Alaska," to wit, 42 Stat. 1072, 43 Stat. 1017, 44 Stat. 334, 1183, 45 Stat. 68, 1098, authorize

the transportation of shipwrecked or destitute seamen in Alaska to the port of shipment in the United States upon the issuance of a shipwrecked seamen's certificate by an authorized agent of the Department of Commerce of the United States Government, to wit, by the Collector or Deputy Collector of Customs in an Alaskan port, and upon presentation of said certificate to the United States Treasury the Comptroller General is obligated to pay said compensation forthwith, if the amount thereof is in accordance with the above-cited statutes prescribing the rates for such transportation."

III.

That the owner of the wrecked vessel stands upon the same footing [43] as all other vessel owners with respect to the right to receive compensation for transporting shipwrecked seamen to a port in the United States, and such seamen are so transported from an Alaskan port upon the order of a Collector or Deputy Collector of Customs and upon the issuance by the latter of a shipwrecked seamen's certificate to the master of the transporting vessel, as provided by §§ 678, 679 and 680, Title 46, U. S. C., the owner of such vessel holding said certificate is entitled to the compensation specified and allowed by statute, and the right to said compensation is not affected by the fact that the owner of the transporting vessel also owns the vessel upon which the seamen were wrecked. That the plaintiff is entitled to recover judgment against the defendant in the sum of $397.20.

Done in open court this —— day of February, 1932.

_____,
District Judge.

Presented by:

_____. [44]

Whereupon the court denied said motion of the plaintiff, to which ruling the plaintiff excepted and its exception was allowed. Whereupon the court took the case under advisement until March 21, 1932, on which date it entered its memorandum opinion as follows, to wit:

"On December 15, 1929, the SS. 'Depere' was wrecked at or near Port McArthur, southeastern Alaska, and unable to proceed on its voyage. No other vessel of plaintiff was available. The crew consisted of 35 seamen that were taken to Port McArthur, and from there transported to Ketchikan, Alaska. The customs office, by the deputy collector at Ketchikan, took full charge of the crew upon arrival, and provided subsistence until transported on the plaintiff's SS. 'Yukon' to port of Seattle, Washington, the 'Depere's' debarking port.

"Upon the arrival of the SS. 'Yukon' on the port of Ketchikan, en route to Seattle, the deputy collector of customs, under the provisions of Title 46 USCA, secs. 678 and 679, required the master of said ship to transport said crew of seamen, and agreed in writing to pay therefor the sum of $397.20, being $13.24 for each seaman. The seamen were trans-

ported, landed at the port of Seattle on the 22d of November 1929, which fact was certified by the United States Collector of Customs at the port of Seattle, and thereafter the said certificate was transmitted to the Treasury Department of the United States, together with a statement of account for said transportation, and the destitute seamen's certificate; and that thereafter payment thereof was denied for the given reason: 'The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator and where this duty has been undertaken the appropriation for the "Relief and Protection of American Seamen" is not available to reimburse the owner or operator for the expense incurred in performing such duty.' And this action followed.

"The shipping articles contain the following provisions: 'It is agreed between the Master and seamen, or mariners, of the SS. "Depere" of New York, N. Y., of which J. Newland is at present Master, or whoever shall go for Master, now bound from the port of Seattle, Wash., to Ketchikan, Alaska, and such other ports and places in any part of Alaska and B. C., as the Master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding two calendar months.'

"Benefits accruing to the seamen under the stipulation were wages and maintenance and

medical attendance and cure during voyage, and also right of the seamen to be returned.

"By sec. 593, Title 46, USCA, upon shipwreck, the right to wages terminated, and had a vessel of the plaintiff been available at Port McArthur, the obligation no doubt would have been executed; none available, the seamen were for the time considered as totally destitute (sec. 593, *supra*), and as such were maintained by the Collector of Customs and taken to Ketchikan where a ship of the plaintiff was available, and there delivered to the master of [45] the 'Yukon,' plaintiff's vessel, with a certificate of the Deputy Collector of the destitute condition of the seamen, and on agreement to transport for a stipulated sum. See sec. 543, Title 46, USCA.

"No point is made that the Collector was not qualified to make the agreement and certificate of destitute seamen. As to the point that the law has no application to Alaska, it may be said that the Court judicially knows that Alaska is not contiguous to the United States; that geographically it is foreign, and that by the act of January 3, 1923 (42 Stat. 1072), and repeated thereafter (43 Stat. 1017; 44 Stat. 334, 1183; 45 Stat. 68, 1098) seamen in Alaskan waters are placed on the same basis as seamen of the politically foreign countries, and appropriations made 'For the relief and protection of American seamen in * * * the territory of Alaska.'

"The primary object of the appropriation is for the relief of destitute seamen, and not for the benefit of the steamship company. Upon being delivered to the master of the plaintiff's ship, 'Yukon,' at Ketchikan, the seamen were no longer destitute. The plaintiff was able to maintain its obligation to return the seamen to the place of debarkation, and the certificate of the deputy collector, thought it may have been the inducing cause to the master to accept the seamen for transportation, gave no right to the company for compensation out of the destitute seamen's fund.

"This court, in passing upon the demurrer to the complaint, said that to deny the right would deprive the owner of the vessel of the privileges of the limitation of liability statute. The trial developed nothing which would operate against the owner in the issue at bar on that account. There is no evidence that the vessel was lost, nor was limitation of liability invoked, and the mere assertion of right is because of the disablement of the ship and the destitute seamen's appropriation fund.

"An order of dismissal may be presented.

"JEREMIAH NETERER,
"United States District Judge."

and the court ordered that said memorandum opinion be entered as its findings of fact and conclusions of law, and the plaintiff took exception to said memorandum decision and each and every part thereof and to the said order adopting the

court's opinion as its findings of fact and conclusions of law, and to each and every part thereof, which exceptions were duly allowed. The plaintiff's alternative motion for judgment in its favor was denied, to which plaintiff duly took exception and its exception was allowed, and thereafter the defendant's motion for dismissal of [46] the plaintiff's action was allowed and an order duly entered dismissing said action as follows, to wit:

"JUDGMENT OF DISMISSAL.

"This cause having heretofore come on for hearing and the motion of the defendant for judgment having heretofore been granted, now therefore

"IT IS ORDERED, ADJUDGED and DECREED that this cause be, and the same is hereby dismissed and the defendant awarded judgment against the plaintiff for its costs and disbursements herein to be taxed.

"To the foregoing and each and every part thereof the plaintiff excepts and its exception is allowed.

"Done in open court this 11th day of April, 1932.

"JEREMIAH NETERER,

"Judge."

to which order plaintiff duly excepted and its exception was allowed. Each of said exceptions of the plaintiff was based upon the grounds set forth by the plaintiff in its memorandum of authorities in support of its motion for judgment in its favor, to wit, upon the grounds that plaintiff was entitled to judgment against the defendant as a matter of law; that the statutes for the relief and protection

of American seamen and for the transportation of shipwrecked and destitute seamen in foreign ports or the Territory of Alaska to the United States authorize the payment of compensation to the vessel transporting such seamen from Alaskan ports to a port in the United States upon the presentation to the United States Treasury of a shipwrecked seamen's certificate by a Collector or Deputy Collector of Customs in the said Alaskan port; and on the grounds that said statutes authorize the payment of compensation as agreed on between the master of the transporting vessel and the said Customs official irrespective of and without regard to whether or not the vessel which transported the shipwrecked seamen upon the demand of the said Customs official was subject to [47] the same ownership as the vessel upon which said seamen were shipwrecked; and that the steamship "Yukon" belonging to the plaintiff, having transported the shipwrecked seamen from Ketchikan, Alaska, to the Port of Seattle upon the demand of the Deputy Collector of Customs M. S. Dobbs, and in pursuance of the agreement set forth in the shipwrecked seamen's certificate has earned the compensation agreed upon in said certificate and that the plaintiff is entitled to recover the same from the defendant.

And thereafter on the 29th day of March, 1932, the court entered an order allowing the plaintiff until the 11th day of April, 1932, to present and file its bill of exceptions in said cause.

And thereafter on the 11th day of April, 1932, the following order was duly entered:

"It is ORDERED, ADJUDGED and DECREED that the original exhibits in this cause be transmitted to the Circuit Court of Appeals with the Transcript of Record on Appeal.

"Done in open court this 11th day of April, 1932.

"JEREMIAH NETERER,

"District Judge."

And at the trial of said cause such proceedings were had and such evidence was offered and such motions and such rulings by the court were made and such exceptions were taken and saved at the respective times of the several rulings in actions excepted to as herein indicated in the foregoing pages. Inasmuch as the matters and things above set forth do not fully appear of record, the said plaintiff Alaska Steamship Company tenders and presents the foregoing as its bill of exceptions in said cause and prays that the same may be settled, allowed and signed and sealed and made a part of the record in said cause by this Honorable Court, pursuant to the law in such cases.

Which is accordingly done and ordered by the Court on this 2d day of April, 1932, in term.

"JEREMIAH NETERER,

"District Judge." [48]

And now in furtherance of justice and that right may be done, the plaintiff tenders and presents the foregoing as its bill of exceptions in the above-entitled cause and prays the same may be settled and allowed, and signed and certified as provided by law.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff.

Copy received this 9th day of April, 1932.

ANTHONY SAVAGE,
United States Attorney.
By ANTHONY SAVAGE,
United States Attorney.

Approved as to form.

JEFFREY HEIMAN,
Ass't U. S. Atty.

[Endorsed]: Lodged Apr. 11, 1932.

[Endorsed]: Filed May 2, 1932. [49]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING MAY 21, 1932, FOR FILING RECORD.

This matter having come on regularly for hearing this 9th day of May, 1932, upon the stipulation of the parties hereto for an extension of time for the filing of transcript of appeal with the Clerk of the United States Circuit Court of Appeals for the 9th Circuit, and it appearing to the court that appellant should have until the 21st day of May, 1932, within which to file its transcript of record on appeal, now, therefore,

IT IS ORDERED, ADJUDGED and DECREED that the appellant Alaska Steamship Company shall have until the 21st day of May, 1932, within which to file its transcript of record on appeal in the above-entitled cause with the Clerk of the United States Circuit Court of Appeals for the 9th Circuit.

Done in open court this 9th day of May, 1932.

JEREMIAH NETERER,
District Judge.

Approved:

ANTHONY SAVAGE,
JEFFREY HEIMAN,
Asst. United States District Atty.,
Attorneys for Defendant and Appellee.

Filed May 9, 1932. [50]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD ON APPEAL.

To the Clerk of the Above-entitled Court:

You will please prepare the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit in the above cause to consist of all necessary papers, including the following:

1. Complain.
2. Answer to the complaint.
3. Stipulation waiving jury.
4. Judgment of dismissal.
5. Order extending time for filing bill of exceptions.
6. Bill of exceptions.
7. Petition for appeal and order allowing appeal.
8. Assignment of errors.
9. Citation on appeal.
10. Notice of appeal.

11. Order transmitting exhibits.
12. Cost bond on appeal and order of approval.
13. This praecipe.
14. Clerk's certificate. [51]

You are requested except upon this praecipe to omit all captions except name of paper, to omit all acceptances of service except on instruments Nos. 6, 9, 10, 13 and 14, to omit verifications on instruments Nos. 1, 2 and 3, and to omit filing endorsements except date thereof.

BOGLE, BOGLE & GATES,
Attorneys for Plaintiff.

Received a copy of the within praecipe this 7 day of May, 1932.

ANTHONY SAVAGE,
Attorney for Deft.

Filed May 7, 1932. [52]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify that this typewritten transcript of record, consisting of pages numbered from 1 to 52, inclusive, is a full, true and complete copy of so much of the record, papers and

other proceedings in the above and foregoing entitled cause as is required by praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court at Seattle, and that the same constitutes the record on appeal herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the following is a true, and correct statement of all expenses, costs, fees and charges incurred in my office or on behalf of the appellant for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, to wit: [53]

Clerk's fees (Act of Feb. 11, 1925), for making record, certificate or return, 127 folios at 15¢ per folio	$19.05
Appeal fee (Sec. 5 of Act)	5.00
Certificate of Clerk to Transcript of Record	.50
Certificate of Clerk to Original Exhibits	.50
Total	$25.05

I further certify that the above cost of preparing and certifying record, amounting to $25.05, has been paid to me by the attorneys for the appellant.

I further certify that I transmit herewith the original citation in the above-entitled cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of the said

District Court at Seattle, in said District, this 11th day of May, 1932.

[Seal] ED. M. LAKIN,
Clerk of the United States District Court for the Western District of Washington.

By T. W. Egger,
Deputy. [54]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,—ss.

To United States of America, Defendant and Appellee, and to ANTHONY SAVAGE, United States Attorney, Its Attorney, GREETING:

YOU, AND EACH OF YOU, are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit in the City of San Francisco, State of California, thirty (30) days from and after the day this citation bears date, pursuant to an order allowing an appeal filed and entered in the Clerk's office in the District Court of the United States for the Western District of Washington, Northern Division, from a judgment of dismissal, signed, filed and entered on the 11th day of April, 1932, in that certain suit being at law No. 20,365 wherein Alaska Steamship Company, a corporation, is plaintiff and appellant, and you are defendant and appellee, to show cause, if any there be, why the judgment of dismissal against the said plaintiff

and appellant as in said order allowing appeal mentioned, should not be corrected, and why justice should not be done to the parties in that behalf. [55]

WITNESS the Honorable JEREMIAH NETERER, United States District Judge for the Western District of Washington, Northern Division, this 12 day of April, 1932.

[Seal] JEREMIAH NETERER,
District Judge.

Copy received this 11 day of April, 1932.

JEFFREY HEIMAN,
Asst. United States District Atty.,
Attorney for Defendant and Appellee.

Filed Apr. 11, 1932. [56]

[Endorsed]: No. 6842. United States Circuit Court of Appeals for the Ninth Circuit. Alaska Steamship Company, a Corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed May 13, 1932.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 6842

United States
Circuit Court of Appeals
For the Ninth Circuit

ALASKA STEAMSHIP COMPANY,
a Corporation,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the September term, A. D. 1932, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the Court Room in the City of Seattle, in the State of Washington, on Monday, the twelfth day of September, in the year of our Lord One Thousand Nine Hundred and Thirty-two.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge.

[Title of Cause.]

ORDER OF SUBMISSION.

ORDERED appeal argued by Mr. Norman M. Littell, counsel for appellant, and by Mr. Jeffrey Heiman, Assistant United States Attorney, counsel for appellee, and submitted to the Court for consideration and decision, with leave to counsel for appellant to file reply brief in five (5) days from date.

At a stated term, to wit, the October Term, A. D. 1932, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday, the thirteenth day of February, in the year of our Lord One Thousand Nine Hundred and Thirty-three.

Present: Honorable CURTIS D. WILBUR, Senior Circuit Judge, Presiding, Honorable WILLIAM H. SAWTELLE, Circuit Judge, Honorable JULIAN W. MACK, Circuit Judge.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT.

By direction of the Court, ORDERED that the typewritten opinion this day rendered by this Court in above cause be forthwith filed by the clerk and that a judgment be filed and recorded in the minutes of this Court in accordance with the opinion filed.

[Title of Court and Cause.]

OPINION OF UNITED STATES CIRCUIT COURT OF APPEALS.

Upon Appeal from the District Court of the United States for the Western District of Washington, Northern Division.

Before: WILBUR and SAWTELLE, Circuit Judges.

SAWTELLE, Circuit Judge:

This action was brought in the District Court by appellant to recover the cost of transporting from Ketchikan, Alaska, to Seattle, Washington, the crew of the steamship Depere, owned and operated by appellant, which vessel, on November 15, 1929, while en route from Seattle to Ketchikan, was wrecked near Port McArthur, Alaska, where the crew went ashore. The following day, November 16, in response to radio messages from the Depere at the time of the wreck, a United States Coast Guard boat transported the crew of the Depere to Ketchikan, Alaska, where they were landed on November 17, 1929. The United States Deputy Collector of Customs at Ketchikan took charge of the crew of the Depere as destitute seamen and provided them with lodging and sustenance, as required by §§678 and 679 of Title 46, U. S. C. A., which are as follows:

> "§678. Subsistence to destitute seamen; return to United States. It shall be the duty of the consuls and vice consuls, from time to

time, to provide for the seamen of the United States, who may be found destitute within their districts, respectively, sufficient subsistence and passages to some port in the United States, in the most reasonable manner, at the expense of the United States, subject to such instructions as the Secretary of State shall give. The seamen, if able, shall be bound to do duty on board the vessels in which they may be transported, according to their several abilities."

"§679. Transportation of destitute seamen to United States. All masters of vessels of the United States, and bound to some port of the same, are required to take such destitute seamen on board their vessels, at the request of consular officers, and to transport them to the port in the United States to which such vessel may be bound on such terms, not exceeding $10 for each person for voyages of not more than thirty days, and not exceeding $20 for each person for longer voyages, as may be agreed between the master and the consular officer, when the transportation is by a sailing vessel; and said consular officer shall issue certificates for such transportation, which certificates shall be assignable for collection. If any such destitute seaman is so disabled or ill as to be unable to perform duty, the consular officer shall so certify in the certificate of transportation, and such additional compensation shall

be paid as the Comptroller General of the United States shall deem proper. Every such master who refuses to receive and transport such seamen on the request or order of such consular officer shall be liable to the United States in a penalty of $100 for each seaman so refused. The certificate of any such consular officer, given under his hand and official seal, shall be presumptive evidence of such refusal in any court of law having jurisdiction for the recovery of the penalty. No master of any vessel shall, however, be obliged to take a greater number than one man to every one hundred tons burden of the vessel on any one voyage or to take any seaman having a contagious disease."

November 20, 1929, the Deputy Collector of Customs issued a shipwrecked seamen's certificate addressed to the master of the steamship Yukon, also owned and operated by appellant, requiring the master of the Yukon to transport the crew of the Depere to the port of Seattle, Washington, and agreeing to compensate appellant for such transportation in a certain amount. The United States Deputy Collector of Customs at Seattle certified to the arrival of the crew of the Depere via the Yukon on November 22, 1929.

Appellant then applied to the Comptroller General of the United States for the compensation stipulated in the shipwrecked seamen's certificate. This claim was rejected on the ground that:

"The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator and where this duty has been undertaken the appropriation for the 'Relief and Protection of American Seamen' is not available to reimburse the owner or operator for the expense incurred in performing such duty."

This action was then brought to recover said sum, and it was alleged:

"That the aforesaid action of the Comptroller General of the United States in refusing to pay the claim of the plaintiff as set forth herein constitutes an arbitrary and wrongful act; that the aforesaid ruling of the Comptroller General represented by the above-quoted letter is an arbitrary and unlawful construction and interpretation of the above-cited statutes [46 U. S. C. A., §§678, 679] and that such construction and interpretation placed upon the said statutes by the Comptroller General is arbitrary and illegal in the following respects, to wit: It violates and contravenes the statutes of the United States expressly allowing compensation to ship-owners transporting shipwrecked seamen to the United States, and making it the duty of the consular officers and commercial agents of the United States, and not of the owners of the shipwrecked vessel, to provide subsistence and transportation for the shipwrecked crew to some port in the

United States; it renders said statutes unconstitutional and in violation of the Fifth Amendment of the Constitution of the United States, in that it results in a taking of property without just compensation or due process of law."

The record shows that it has been the practice and custom of the United States since the beginning of the present century to transport from Alaskan ports seamen shipwrecked in Alaskan waters to the port of Seattle, Washington, at the expense of the United States, whenever such transportation was authorized by a shipwrecked seamen's certificate issued by a Collector of Customs or a Deputy Collector of Customs in Alaskan ports; that on many occasions during this period appellant has transported on one or another of its vessels plying between Seattle and Alaskan ports, seamen of various vessels wrecked in Alaskan waters, upon the demand of the customs officers, and upon the issuance of shipwrecked seamen's certificates; that in each of such instances the United States, acting through the Comptroller General of the Treasury, has paid the amount of compensation agreed upon in said certificate upon demand of appellant; that at no time prior to this instance has payment of such compensation to appellant been refused; that on not less than three occasions appellant has transported from an Alaskan port to Seattle, upon the demand of a customs official and upon issuance of a shipwrecked sea-

men's certificate, as in this case, shipwrecked seamen who had served upon a vessel owned by appellant which had been wrecked in Alaskan waters, and in each instance compensation was paid by the United States as specified in the certificate, upon demand by appellant; that it has been the practice of the Department of Commerce of the United States to regard seamen of American vessels shipwrecked in Alaskan waters as destitute seamen within the meaning of Sections 593, 678, 679 and 680 of Title 46, U. S. C. A., and that the Department of Commerce has supplied the customs officials in Alaska with printed forms entitled "Certificate given by Customs Officers to Masters of Vessels Transporting Shipwrecked American Seamen to the United States from Alaska—Department of Commerce and Labor, Bureau of Navigation," and has instructed such officers to arrange for the transportation to the United States of shipwrecked seamen by issuing said certificates to the masters of vessels bound for the United States, requiring them to transport said seamen to the United States for a compensation agreed upon in said certificates; and that it likewise has been the practice of the Comptroller General of the United States to pay out and disburse from the "Appropriation for the Relief and Protection of American Seamen," upon presentation of a shipwrecked seamen's certificate to the Treasury Department of the United States, the sum agreed to be paid in such certificate.

The trial Court rendered a memorandum opinion, as its findings of fact and conclusions of law, ordering a judgment of dismissal. (60 F. (2d) 135.)

The shipping articles contain the following provision:

> "It is agreed between the Master and seamen, or mariners, of the S. S. Depere, of New York, N. Y., of which J. Newland is at present Master, or whoever shall go for Master, now bound from the port of Seattle, Wash., to Ketchikan, Alaska, and such other ports and places in any part of Alaska and B C., as the Master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding two calendar months."

The learned trial Court held that these articles imposed an obligation on the owner of the vessel to return the seamen to the port of shipment after the wreck of the vessel. While we are affirming the judgment on another ground, we do not wish to be understood as approving that construction of the articles. As we construe them, they merely describe the voyage, the general nature and probable length thereof, and the port at which the voyage was to terminate. In the event of the wreck of a vessel, the statute itself fixes the status of the destitute seamen. Section 593 of Title 46, U. S. C. A., reads as follows:

> "§593. Termination of wages by loss of vessel; transportation to place of shipment. In cases where the service of any seaman ter-

> minates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seamen shall be entitled to wages for the time of service prior to such termination, but not for any further period. Such seaman shall be considered as a destitute seaman and shall be treated and transported to port of shipment as provided in sections 678, 679 and 681."

And this section, when construed in connection with the above quoted sections, provide for the return transportation of the seamen to the port of shipment at the expense of the Government, provided, of course, such transportation is from a foreign port and that suitable arrangements for such transportation are made as required by said statutes. In the absence of a provision in the shipping articles obligating the owner of the vessel to return the seamen to the port of shipment, the contract was terminated by shipwreck; otherwise the law would not have placed the burden of returning such seamen upon the Government.

Appellant lays great stress upon the act of January 3, 1923 (42 Stat. 1072), which reads as follows:

> "Relief and protection of American seamen in foreign countries, and in the Panama Canal Zone, and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, Porto Rico, the Philippine Islands, and the Virgin Islands, $200,000; provided, that here-

after the amount agreed upon between the consular officer and the master of the vessel in each individual case not in excess of two cents per mile, together with such additional compensation for transporting sick or disabled seamen as is now provided by law, shall in each case constitute the lawful rate for transportation on steam vessels."

Undoubtedly, it was the intention of Congress, as manifested by this act, to extend the appropriation for that year to the transportation of shipwrecked seamen from Alaskan ports to the United States, but the terms of the act would seem to indicate that this purpose has failed of accomplishment, there being, of course, no American consular officer in Alaska. This proviso as to transportation was not carried into subsequent appropriation acts for the relief and protection of shipwrecked American seamen in the Territory of Alaska. The general legislation upon the subject of such transfer made no specific reference to the Territory of Alaska, nor to any other specific territory, but simply authorized payment for such transportation solely upon the certificate of an American consular officer. The question is whether or not the certificate of the Deputy Collector of Customs at Ketchikan satisfies the above quoted statute (§§678, 679, Title 46, U. S. C. A.) We are of opinion that it does not, and that there is no authority for entering a judgment against the United States based upon such a certifiate, or upon a certificate of any

agent or officer of the Government other than the one specially authorized by statute. It follows therefore that the Government is not estopped from insisting upon the invalidity of the certificate or agreement in question. The fact that the seamen were delivered to the master of the steamship Yukon, owned by appellant, and by appellant transported to the port of shipment on that vessel, would not bar a recovery by appellant, if otherwise entitled thereto. 3 Decisions of Comptroller General 936.

The judgment of the District Court is affirmed, without prejudice to the right of appellant to apply to Congress for such relief as the facts of the case may warrant.

[Endorsed]: Opinion. Filed February 13, 1933. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 6842

ALASKA STEAMSHIP COMPANY,
a Corporation,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

JUDGMENT.

UPON APPEAL from the District Court of the United States for the Western District of Washington, Northern Division.

THIS CAUSE came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Northern Division, and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed, without prejudice to the right of appellant to apply to Congress for such relief as the facts of the case may warrant.

[Endorsed]: Judgment. Filed and entered February 13, 1933. Paul P. O'Brien, Clerk.

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT TO RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing seventy-nine (79) pages, numbered from and including 1 to and including 79, to be a full, true and correct copy of the entire record, excluding original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellant, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 4th day of May, A. D. 1933.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(4086)

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1932

No._____

ALASKA STEAMSHIP COMPANY, a corporation, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent.*

PETITION

FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

LAWRENCE BOGLE,
CASSIUS E. GATES,
NORMAN M. LITTELL,
BOGLE, BOGLE & GATES,
Proctors for Petitioner.

Office and Post Office Address,
609-24 Central Building, Seattle, Washington.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

To the HONORABLE CHARLES E. HUGHES,
Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States:

PRAYER

The Petitioner, Alaska Steamship Company, a corporation, prays that a Writ of Certiorari issue to review the decree entered on February 13, 1933, by the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause (R. 79).

DECREE BELOW

Such decree of the United States Circuit Court of Appeals for the Ninth Circuit affirmed the decision of the United States District Court for the Western District of Washington, Northern Division, dismissing the action of the petitioner brought to recover compensation for transporting shipwrecked American seamen from Ketchikan, Alaska, to the port of Seattle.

QUESTION PRESENTED

Whether the acts for the relief and protection of shipwrecked American seamen in foreign ports, Alaska and other territories, authorize the shipment of shipwrecked seamen from the Territory of Alaska to ports of the United States at the expense of the government in

accordance with and in pursuance of the terms of a Shipwrecked Seamen's Certificate (R. 32-37) issued by United States Department of Commerce, Bureau of Navigation, through its customs officials in Alaskan ports.

SUMMARY OF FACTS

On November 15, 1929, the SS. DEPERE, belonging to the petitioner steamship company was wrecked near Cape Decision, Southwestern Alaska (R. 30). The ship's crew went ashore in lifeboats, were picked up the next day by a United States Coast Guard cutter, taken to Ketchikan, Alaska, and delivered to the United States Deputy Collector of Customs, in Ketchikan, who took charge of the crew as destitute seamen and provided them with lodging and sustenance (R. 31).

The SS. YUKON, another vessel of the appellant's line, stopped at the port of Ketchikan en route for Seattle on her regular course. The Deputy Collector of Customs issued to her master, Captain Glasscock, a Shipwrecked Seamen's Certificate, furnished by the Department of Commerce, Bureau of Navigation, to customs officers in Alaska for execution and delivery to masters of vessels transporting shipwrecked seamen from Alaska to the United States (R. 31-37).

Captain Glasscock transported the shipwrecked seamen on board the SS. YUKON to the port of Seattle where the United States Collector of Customs, in accordance with the rules and regulations of the Department of Commerce (R. 40) and the established practice of his office

(R. 39-41), certified on the bottom of said certificate that the crew had been delivered in Seattle.

Demand for payment of the compensation specified in said certificate was regularly made upon the Comptroller General of the United States, who refused payment on the sole ground that:

> "The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator, and where this duty has been undertaken the appropriation for the relief and protection of American seamen is not available to reimburse the owner or operator for the expenses incurred in performing such duty." (R. 37-8).

RULINGS OF LOWER COURT

This action was brought to recover the compensation which the Comptroller had refused to pay on the foregoing ground. The defendant demurred to the complaint. Judge Neterer, district court judge of the Western District of Washington, Northern Division, overruled the demurrer (*Alaska SS. v. U. S.*, 1930 A. M. C. 1907).

The respondent then answered (R. 14-16) and the case was tried. The petitioner proved the facts alleged in the complaint, and all of them (R. 29-41). The respondent offered no proof whatever (R. 41) but rested his defense upon the legal construction of the statutes in question and moved to dismiss.

The district court, Judge Neterer, rendered its decision herein (R. 51-54) as its Findings of Fact and Conclusions of Law (R. 54), this decision being squarely opposed to the decision on demurrer in holding that the

petitioner could not recover compensation for transporting to Seattle the crew of one of its own vessels. A judgment of dismissal was accordingly entered (R. 55) from which an appeal was prosecuted to the circuit court of appeals.

RULING OF THE CIRCUIT COURT OF APPEALS

The circuit court of appeals held that the obligation does not rest on a shipowner to transport a shipwrecked crew of one of its own vessels to a port in the United States, but the circuit court affirmed the judgment of dismissal entered by the district court solely upon the ground that the Acts for Relief and Protection of Shipwrecked American Seamen in Alaska do not authorize the issuance of shipwrecked seamen's certificates in Alaska, but refer solely to foreign ports where consular officers are authorized to issue the same (R. 69). This is not the grounds upon which the Comptroller General refused to pay the petitioner's claim, nor the ground upon which the action was defended, the point having been raised for the first time in respondent's answering brief on appeal to the circuit court (R. 53).

REASONS FOR GRANTING WRIT

I. The decision of the circuit court of appeals for the ninth circuit throws into confusion the administration of the relief and protection which has been afforded to shipwrecked seamen in Alaska, the Hawaiian Islands, Porto Rico, the Philippine and Virgin Islands, and nullified the acts annually passed for many years (Post P. 10) specifically appropriating funds for the relief of ship-

wrecked seamen in said territories insofar as said acts contemplate transportation of such seamen back to the United States. The construction given by the circuit court to Sections 593, 678, 679 of Title 46 U. S. C., and to the appropriation acts referred to, relieves American ships from all obligation to transport shipwrecked American seamen stranded in territorial ports to ports of the United States, and results in inequality of treatment towards seamen shipwrecked in foreign ports and those wrecked in ports of non-continguous territories of the United States, contrary to the intent of Congress.

II. The decisions of the district court and the circuit court in this case are the only known decisions written by courts of this country squarely involving the obligations of the shipowner and the government respectively, towards shipwrecked seamen in a foreign or territorial port. This issue has been in confusion for many years. Shipwrecked seamen's certificates have been regularly issued by consular officers in foreign ports and customs collectors in Alaska to vessels transporting shipwrecked seamen to the United States, without regard to the ownership of the transporting vessel. The Comptroller General of the United States, on the other hand, has refused to pay the compensation authorized by these certificates whenever it was discovered that the vessel transporting the seamen belonged to the same owner as did the wrecked vessel (R. 37-38, Decisions of Comp. Gen., Vol. 3, p. 148, Vol. 4, p. 252, 542, Vol. 5, p. 623, Vol. 6, p. 723). Neither the Comptroller General nor any administrative department of the government has ever questioned the applicability of the statutes in

question to Alaska, but the decision of the circuit court construing the statutes overturns the established administrative practice and construction of these statutes for a period of over thirty-three years. An important question of Federal Law has thus been determined which should be reviewed by this court.

UNITED STATES OF AMERICA,
STATE OF WASHINGTON,
COUNTY OF KING, } ss.

CASSIUS E. GATES, being first duly sworn on oath deposes and says:

That he is an attorney at law, admitted to practice before the Supreme Court of the United States; that he is one of the Proctors for the Petitioner in the above entitled cause; that he prepared the foregoing Petition in good faith and not for delay; that this Petition in his opinion is meritorious and well founded in law; that he has read said petition, knows the contents thereof, and believes the same to be true.

CASSIUS E. GATES.

Subscribed and sworn to before me this 4th day of May, 1933.

CLAUDE E. WAKEFIELD,
Notary Public in and for the State of Washington, residing at Seattle.

LAWRENCE BOGLE,
NORMAN M. LITTELL,
BOGLE, BOGLE & GATES,
of Counsel,
Proctors for Petitioner.
Central Building,
Seattle, Washington.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1932

No. _____

ALASKA STEAMSHIP COMPANY, a corporation, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent.*

BRIEF SUPPORTING PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The only opinions rendered on the point at issue are in this case. The first decision by District Judge Neterer overruling the respondent's demurrer (1930 A. M. C. 1907, Oct. 16, 1930) sustained the right of the petitioner to bring an action to recover compensation for transporting shipwrecked seamen from Alaska to a port of the United States in pursuance of the Shipwrecked Seamen's Certificate issued by the Customs officials in Alaska. When the case was tried on its merits, although all of the facts of the complaint were proved and the

respondent offered no evidence whatever, the district judge in effect reversed his former conclusion and held that the petitioner could not recover (R. 51-54, 60 Fed. 2d 135, March 21, 1932). The primary question considered in both decisions was whether or not the shipowner could recover for returning to an American port the shipwrecked crew of one of its own vessels, the application of the laws for the relief and protection of shipwrecked seamen to Alaska not having been challenged (R. 53).

The opinion of the circuit court of appeals, Judges Wilbur and Sawtelle, was written by Judge Sawtelle, filed February 13, 1933 (R. 69), and reported in 63 Fed. 2d 398.

JURISDICTION

The jurisdiction of this court is invoked under Judicial Code, section 240 (a) as amended by act of February 13, 1925, Ch. 229 (43 Stat. 938; 28 U. S. C. A., section 347).

The decree of the circuit court of appeals to be reviewed was entered February 13, 1933 (R. 79).

Petition for writ of certiorari was filed May , 1933.

No petition for rehearing has been filed relative to such final decree.

FACTS

The facts are sufficiently reviewed in the petition, there being no dispute in respect to them, questions of law only having been involved in the case. The decision of the circuit court of appeals leaves but one question to be determined by this court.

QUESTION PRESENTED

Whether the acts for the relief and protection of shipwrecked American seamen in foreign ports and Alaska authorize the shipment of shipwrecked seamen from the Territory of Alaska to ports of the United States at the expense of the government in accordance with and in pursuance of the terms of a Shipwrecked Seamen's Certificate issued by the United States Department of Commerce, Bureau of Navigation, through its Customs officials in Alaskan ports.

ARGUMENT

I. Acts for the Relief and Protection of American Seamen in Foreign Ports and in Alaska

We think the error of the Circuit Court's decision will be apparent upon considering the history of the acts for the Relief and Protection of Shipwrecked American Seamen in Foreign Ports and Alaska. Alaska, acquired in March, 1867, was not specifically mentioned until 1896, the act in question previous to 1896 reading as follows:

RELIEF AND PROTECTION OF AMERICAN SEAMEN

> "Relief and protection of American seamen in foreign countries, or so much thereof as may be necessary, $50,000."
>
> Vol. 27 Stat., pages 233, 506.
>
> Vol. 28 Stat., pages 150, 824.

Apparently the traffic between Alaska and the United States increased to such proportions that destitute seamen became a problem, for in 1896 the above entitled act read as follows:

"Relief and protection of American seamen in foreign countries *and also on the coast of Alaska* or so much thereof as may be necessary, $50,000."

The foregoing act was amended in the same year by act of May 28, 1896 (Vol. 29 Stat., page 186), to read as follows:

"Relief and protection of American seamen in foreign countries *and shipwrecked American seamen in the Territory of Alaska*, $50,000 or so much thereof as may be necessary."

The foregoing act was reenacted in the same wording in 1897 (Vol. 29 Stat., page 589, Ch. 268), 1898 (Vol. 30 Stat., page 272, Ch. 55), 1899 (Vol. 30 Stat., page 833, Ch. 128). It will be observed that in each instance recited above the appropriation appears in "An Act Making Appropriations for the Diplomatic and Consular Service for the Fiscal Year Ending June 30, ——," notwithstanding the fact that there were no consular officers in Alaska. Insofar as destitute seamen were concerned, the ports of Alaska were treated as foreign ports in which the seamen were entitled to relief, and the same is true of every appropriation act hereinafter referred to.

In 1900, the act was changed to read as follows, and the same act was reenacted in 1901 and each year successively until 1907:

"Relief and protection of American seamen in foreign countries and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, Cuba, Puerto Rico, and the Philippine Islands, or so much thereof as may be necessary, $30,000.". (Vol. 31 Stat., page 70, Ch. 159).

Vol. 31 Stat., page 898.

Vol. 32 Stat., page 87, page 819.

Vol. 33 Stat., page 79, page 927.

Vol. 34 Stat., page 295, page 925.

The 1908 act was amended to add the words "the Panama Canal Zone" after the words "Porto Rico," and thereafter the act was passed each year down to and inclusive of 1915, except that the appropriation was lowered from $30,000 to $20,000 in 1912, 1913, 1914 and 1915.

Vol. 35 Stat., page 181, page 682.

Vol. 36 Stat., page 346.

Vol. 37 Stat., page 104, page 696.

Vol. 38 Stat., page 452, page 1125.

In 1916, the act was changed to read as follows, and thereafter the same act was passed each year down to and inclusive of 1921, except that the appropriations were increased as indicated below:

> "Relief and protection of American seamen in foreign countries, and in the Panama Canal Zone, and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, Porto Rico, and the Philippine Islands, $40,000." (Vol. 39 Stat., page 262).

Vol. 39 Stat., page 1058, $40,000.

Vol. 40 Stat., page 529, $80,000.

Vol. 40 Stat., page 1335, $100,000.

Vol. 41 Stat., page 223, $100,000.

Vol. 41 Stat., page 1216, $150,000.

From the beginning of the present century, as was established at trial and is admitted by the undisputed facts of this case (R. 44, par. VI; R. 39-41), shipwrecked American seamen in the Territory of Alaska have been regularly transported to a port in the United States

upon the orders of a Customs official and upon the issuance of a Shipwrecked Seamens' Certificate issued by the Department of Commerce, Bureau of Navigation, such as that in evidence in this case (R. 32-37). Compensation had been regularly paid by the United States Government upon presentation at the Treasury of such certificate. These certificates were issued in pursuance of Revised Statutes, Sec. 4577, 4578, and 4579 (now Sections 678, 679 and 681 of Title 46 U. S. C.). It will be noted that Revised Statutes 4578 (Section 679 of Title 46 U. S. C. A., Act of February 28, 1803, Ch. 9, Section 4, 2 Stat. 204, as amended by Act of June 26, 1884, Ch. 121, Section 9, and Act of June 19, 1886, Ch. 421, Section 18), provided that all masters of vessels of the United States were required to take destitute seamen back to the United States upon such terms as were agreed upon with consular officers, and provided a limitation of $10.00 for each person where voyages did not exceed thirty days and $20.00 where voyages did exceed thirty days "when the transportation is by sailing vessel." In 1922, a more specific regulation of the compensation was adopted as an amendment to the appropriation act, the history of which is traced above, the act of 1922 reading:

> "For relief and protection of American seamen in foreign countries and in the Panama Canal Zone, and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, Porto Rico, the Philippine Islands, and the Virgin Islands, $220,000, provided that no permanent appropriation shall be available for payment for the transportation on steam vessels of any seamen in excess of the amount agreed upon between the Consular officers

and the master of the vessel in each individual case; and hereafter the amount so agreed upon not in excess of the lowest passenger rate of such vessels and not in excess of two cents per mile, together with such additional compensation for transporting sick or disabled seamen as is now provided by law, shall in each case constitute the lawful rate." (Vol. 42, page 603, Ch. 204).

The intention that this proviso should apply to the transportation of shipwrecked seamen in Alaska is unmistakable, and yet the same oversight as existed in the acts cited above is still present, namely, the reference to "consular officers" notwithstanding the fact that in none of the places named are consular officers to be found. The same error appears in the act of 1923, where the proviso is repeated with slight changes:

"For relief and protection of American seamen in foreign countries and in the Panama Canal Zone and shipwrecked seamen in the Territory of Alaska, in the Hawaiian Islands, Porto Rico, the Philippine Islands, and the Virgin Islands, $200,000, provided that hereafter the amount agreed upon between the Consular officer and the master of the vessel in each individual case not in excess of the lowest passenger rate of such vessel and not in excess of two cents per mile, together with such additional compensation for transporting sick or disabled seamen as is now provided by law shall in each case constitute the lawful rate for the transportation on steam vessels." (Vol. 42 Stat., page 1072, Ch. 21).

The proviso does not again appear in the subsequent appropriation acts, the languages of which except for the omission of the proviso, is the same as that last quoted above:

1924, Vol. 43 Stat., page 208, Ch. 204.

1925, Vol. 43 Stat., page 1017, Ch. 364.

1926, Vol. 44 Stat., page 334, Ch. 195.
1927, Vol. 44 Stat., page 1183, Ch. 189.
1928, Vol. 45 Stat., page 68, Ch. 57.
1929, Vol. 45 Stat., page 1099, Ch. 102.
1930, Vol. 46 Stat., page 177, Ch. 184.
1931, Vol. 46 Stat., page 1312, Ch. 280.
1932, 72nd Congree, No. 232, Public Laws.
1933, 72nd Congress, No. 387, Public Laws.

The circuit court of appeals pointed out that this proviso was dropped from the act after 1923, but failed to note that the proviso had thereafter been assigned to its proper place in the shipping laws of the United States, where it now appears as Section 680, Title 46, Ch. 18 (relating to merchant seamen).

Throughout the foregoing history of the appropriations for the relief and protection of American seamen since 1896, the total sum of $2,415,000 has been appropriated for the relief of seamen in foreign countries and in the territories and islands specified, of which substantial portions must have been spent for returning shipwrecked seamen from Alaska in accordance with the practice established in the trial of this case, but through the entire period "Consular officers" at foreign ports only are referred to. Note, too, that since the act of June 7, 1872, Vol. 17 Stat., Ch. 322, Sec. 33, seamen's contracts have been terminated at the wreck of their vessel, and since the act of December 21, 1898 (Vol. 30 Stat., 755, Ch. 28, Sec. 3), amending the act of 1872, such seamen have been considered as destitute seamen to be transported to the United States at the expense of the govern-

ment, these provisions being now embodied in Sec. 593, Title 46 U. S. C.:

> "*Termination of Wages by Loss of Vessel; Transportation to Place of Shipment.* In cases where the service of any seamen terminates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled to wages for the time of service prior to such termination, but not for any further period. Such seaman shall be considered as a destitute seaman and shall be treated and transported to port of shipment as provided in sections 678, 679 and 681."

No exception was made in the case of Alaska. The section applied to all shipwrecked seamen.

In further support of the Departmental construction of the acts above referred to, note the express provision of Congress *for foreign ports where there are no Consular officers*, found in Sec. 681 (repealed in 1930 and incorporated in amended Section 679, Title 46 U. S. C. A. supplement), in which it was specifically provided that in addition to the allowance fixed by law "reasonable compensation" shall be paid for transporting destitute seamen:

> " * * * as shall be deemed equitable by the Comptroller General of the United States."

No point was made below or by the Comptroller that the compensation fixed in the shipwrecked seaman's certificate was in any way objectionable. The only question remaining under this section was whether or not Alaskan ports were "foreign ports" within the meaning of the act. For the purpose of relieving shipwrecked and destitute American seamen, ports of this non-contiguous territory of the United States have consistently been

treated as foreign ports, both by Congress and by the Department charged with the responsibility of caring for such seamen.

II. Construction of Statutes by Department Charged With Their Administration

There is no doubt that the Bureau of Navigation, Department of Commerce, has general superintendence of the commercial, marine and merchant seamen of the United States.

Sec. 1 and 2, Title 46 U. S. C.

The established practice of this Department in administering relief to destitute seamen for a period of over thirty-three years, should be all but conclusive of the correct meaning of the statutes construed. To conclude at this time that the Department had no authority to afford "relief" to shipwrecked seamen by transporting them to a United States port would not only overturn this establishment practice but would leave the burden of maintaining destitute seamen in territorial ports upon the government for indefinite periods of time and deny to the government the right to relieve itself of this burden by transshipping the seamen to United States ports. Such an unreasonable construction should not be sustained.

If there was any doubt as to the power of the Department of Commerce, Bureau of Navigation, to place the above construction on the act in question, surely this was dispelled by the repeated appropriations of Congress for a period of over thirty-three years, during which time there were amendments to the acts relating to

merchant seamen without in any way modifying or disapproving of this practice of the Department. This legislative action should be regarded as an acceptance and approval of the Departmental construction binding upon the courts.

New York, N. H. etc. Co. v. Interstate Commerce Commission, 200 U. S. 361;

U. S. v. Falk, 204 U. S. 143;

U. S. v. Gerecedo Hermanos, etc. Co., 209 U. S. 337;

U. S. v. Missouri R R. Co., 278 U. S. 269.

The construction or interpretation of a statute by a Department charged with its administration will not be disturbed by the court without very cogent reasons.

Robertson v. Downing (1887), 127 U. S. 607;

U. S. v. Philbrick, 120 U. S. 52, 59;

Brown v. U. S., 113 U. S. 568, 571;

U. S. v. Falk, 204 U. S. 143, 151;

Bardwell v. Petty (1922), 286 Fed. 772, 774;

Wisconsin v. Illinois (1928), 278 U. S. 400, 73 L. Ed. 426.

An exhaustive analysis of the effect of Departmental construction of statutes upon subsequent judicial construction is found in a note at 278 U. S. 269, 73 L. Ed. 222. This case satisfies all the requirements of the general rule making the Departmental construction binding upon the courts, as follows:

1. That statutes construed are ambiguous.

2. The construction by the Department has been uniform and continuous, as proved in this case since 1900, and probably since 1896 when Alaska was first made a subject of relief in respect to destitute seamen.

3. The construction has been general in that it was acted upon, as proved in this case, (a) by Customs officials in Alaska, (b) by Deputy Collectors of Customs in Seattle, (c) by the Bureau of Navigation in Washington, (d) by the Treasury Department in paying the compensation upon presentation of shipwrecked seamen's certificates.

4. The construction is reasonable. A contrary construction would leave seamen stranded indefinitely in Alaska and would permit shipwrecked seamen on the Canadian coast, much nearer to the United States than to Alaska, to be returned at the expense of the government because they happened to be wrecked near a "foreign port," while seamen at much greater distance in Alaska could not be transported to the United States.

5. The construction does not enlarge or restrict the scope of the statutes construed, but clearly accomplishes their evident purpose.

There being no other decisions upon the point involved, the matter is submitted upon the foregoing basis.

Respectfully submitted,

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NORMAN M. LITTELL,
BOGLE, BOGLE & GATES,
Proctors for Petitioner.

IN THE
SUPREME COURT OF THE UNITED STATES

No. 954

ALASKA STEAMSHIP COMPANY, *Petitioner*

vs.

UNITED STATES OF AMERICA, *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S SUPPLEMENTAL BRIEF REPLYING TO BRIEF OF THE UNITED STATES IN OPPOSITION

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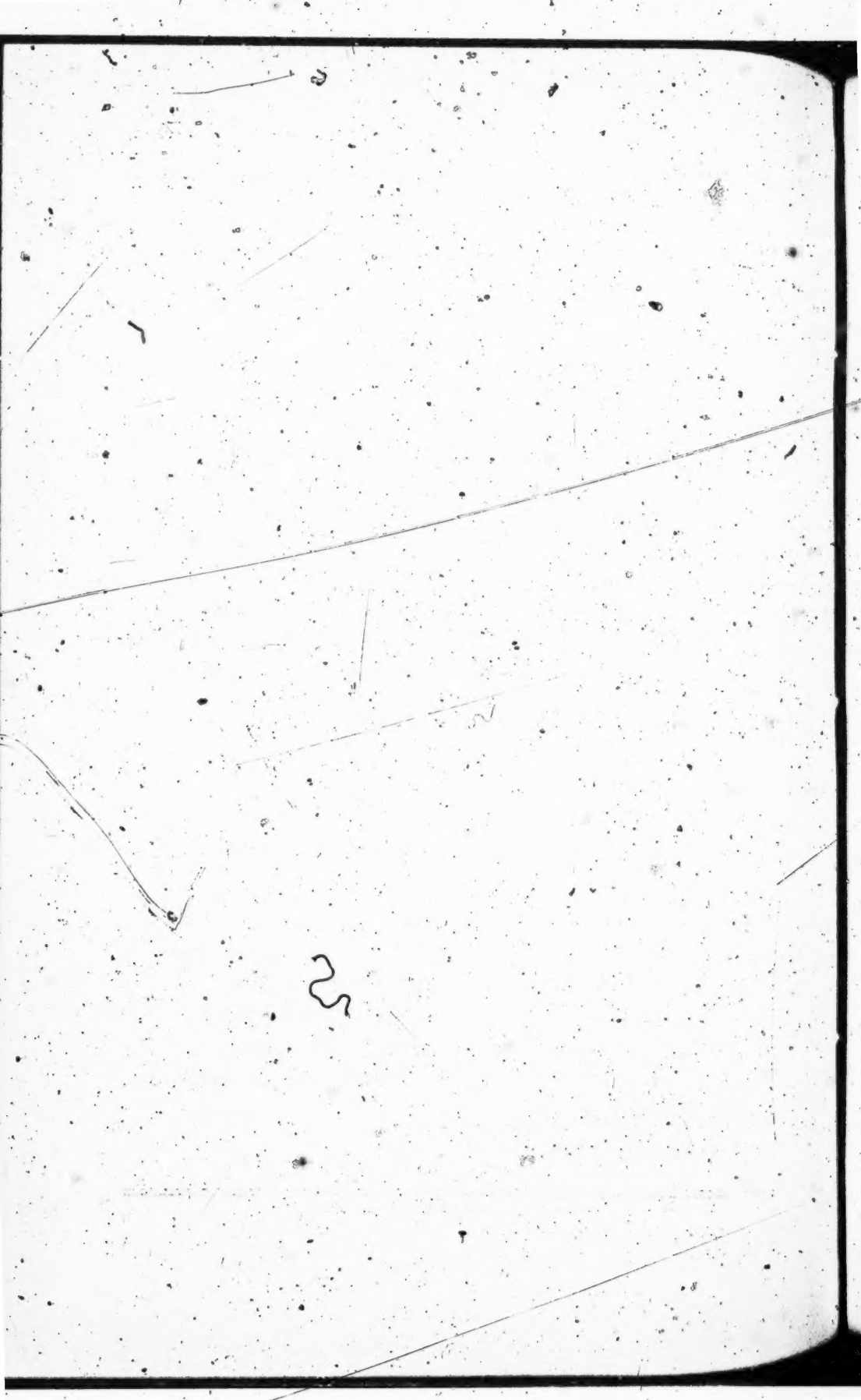

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ALASKA STEAMSHIP COMPANY, *Petitioner*

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S SUPPLEMENTAL BRIEF REPLYING TO BRIEF OF THE UNITED STATES IN OPPOSITION

REASONS FOR SUPPLEMENTAL BRIEF

The brief for the United States is addressed solely to an issue which was not discussed in petitioner's brief, thus leaving the argument confused. This confusion arose in the following way:

There was but one issue in the case before the District Court: *Was the petitioner-shipowner obligated to return to the port of shipment the shipwrecked crew of its own vessel or did the obligation rest upon the government to pay for the return of the seamen in pursuance of the Shipwrecked Seamens' Certificate?*

The facts were not in dispute. The legal question at issue was clearly presented by demurrer. The District Court held, on demurrer, that no obligation rested on

the petitioner to return its seamen, and that an action would lie to recover the compensation (1930 A. M. C. 1907). When the case was tried, although all alleged facts were proved, and the respondent offered no evidence whatsoever and moved to dismiss, the District Court in effect reversed itself and held that petitioner, under the Shipping Articles, had to return shipwrecked seamen to port of shipment (R. 51-54; 60 F (2) 135) and could not recover compensation for so doing.

On appeal to the Circuit Court, there was only the one above issue before the court until the respondent in its answering brief for the first time challenged the applicability to Alaska of the statutes involved. A second issue was therefore raised: *Did Customs officials in Alaska have authority to issue shipwrecked seamens' certificates authorizing transportation of shipwrecked seamen to port of shipment and payment of compensation in accordance with the certificate?*

In disposing of these two issues, the Circuit Court held as to the first that no obligation rested on the shipowner to return its shipwrecked seamen to port of shipment, but as to the second issue affirmed the decree of dismissal *on the sole grounds that the statutes in question did not apply to Alaska* (R. 69-78; 63 F (2) 398).

Petitioner's opening brief is, therefore, addressed solely to this latter issue, but the respondent in its answering brief ignores this issue and addresses itself to the original issue regarding the obligations of a shipowner to a shipwrecked crew, in respect to which petitioner has no brief before this court. The following is, therefore, respectfully submitted.

ARGUMENT

I. OBLIGATIONS OF SHIP OR SHIPOWNER TO SHIPWRECKED CREW; CONTINENTAL AND ENGLISH MARITIME LAW AND USAGE.

II. OBLIGATIONS OF SHIP OR SHIPOWNER TO SHIPWRECKED CREW; AMERICAN LAW AND USAGE.

1. American Legislation.

2. American Decisions; Statutes Construed.

I.

From very early times it has been the rule that freight is the mother of wages; if no freight was carried the seamen received no wages. This rule was applied by the courts with great leniency against the seamen, "the wards of the admiralty," and even modified in cases where freight was lost and seamen saved any part of the wreck. The rule no longer applies in this country, but irrespective of the rule it is not now and never has been in this country or in Europe, the duty of the master or shipowner to return the crew to the home port in cases of shipwreck. From earliest records until the present day, shipwreck terminates a voyage. It is a risk that the seamen must take.

The following relevant excerpts from leading maritime authorities herein submitted are only persuasive authorities for the foregoing statement. As stated by Mr. Chief Justice Telghman in *Morgan & Price v. Ins. Co. of North America* (1807), 4 Dall. 455, 1 L. Ed. 907, cited in 30 Fed. Cas. 1203, in regard to the codes hereinafter quoted:

> "They and the commentators on them have been received with great respect both in the courts of England and the United States, not as conveying any authority in themselves, but as evidence of the general marine law. When they are contradicted by judicial decisions in our own country, they are not to be regarded, but on points which have not been decided they are worthy of great consideration."

The point here involved has not been decided except in the instant case.

According to the Amalphitan Code, the Code of the city of Amalphi, one of the chief commercial cities of Italy from the 9th to the 11th Century, and a maritime power of importance, the rule was as follows:

> "Likewise if after the vessel has departed, she is captured or breaks up, the mariner ought to be paid for the time which he has served up to the time of the shipwreck, and if he has to refund pay, he cannot be constrained to do so for the period of a month computed from the day before the shipwreck, notwithstanding that he is paid by the month." (Article 52, Chapters and Ordinances of the Maritime Code of the Noble City of Amalphi, 1010 A. D.)

An ordinance passed in the reign of King John of England about 1200 A. D., based upon the Laws of Oleron, provides for getting the seamen to land, but only if they aid in salvage work, as follows:

> "If a shyp perysshe in any place the maryners ought to save the moost parte of the goods in the shyppe, and in so doying the marster ought to gyve them theyr costes reasonably to goo to lande, if they have saved so moche that the mayster may do it. And the master may lay to pledge of the saved goodes to some honest man for them. And yf he can not help them so, he is not bound to reward them, but they too lose theyr rewardes whan the shyp is lost."

The laws of the Town of Wisbuy, 1219 A. D., in dealing with the subject of shipwreck (Ch. XII, Sec. 2; The Black Book of Admiralty, Vol. IV, p. 403,) provide:

> "And the seamen shall not separate from the shipmaster all the while that they can help the ship or the goods or the tackle; should goods be salved, the use of them pertains to those whose property they are, unless there should have been an agreement otherwise. And the seaman must follow to the next land or town or village, in order that the seaman may take leave of the shipmaster. And should the shipmaster have received half his freight or less, the seaman is entitled to half his wages; and should the shipmaster have received above half his freight, the seaman shall have his full wages."

An excerpt from The Purple Book of Bruges (1350-1380), giving the Flemish version of the early laws of the sea upon the point in question and based upon an early text of the Rolls of Oleron, goes a step further in providing as follows, in Article 17:

> "Should a ship be wrecked in any country that may be, the ship's crew are bound to save the most they can, and should they help the master, he is bound to them for their services; and should he have no money, from that which they have helped to save he is bound to convey them back to their country; and should they help him not, he is not bound to them and they shall lose their wages, since the ship is lost." (The Black Book, Vol. IV, p. 303).

According to the famous marine ordinance of Louis XIV (1681), Book III, Title 4, Articles VIII and IX, it is provided:

> "VIII. In case the ship be taken, or suffer shipwreck, and ship and goods be entirely lost, the seamen shall pretend to no wages; but they shall not

however be obliged to restore what has been advanced to them.

"IX. If some part of the ship be preserved, the seamen shall be paid the wages that are due to them out of the wreck they have preserved; and if there be only goods saved, the seamen, even those that are engaged by the freight, shall be paid their wages by the master, proportionably to the freight he receives; and whatever way they be hired, they shall be over and above paid for the time they are employed in saving the wreck and goods."

Frederick Jacobsen, famed German advocate, in his "Law of the Sea," translated from German (1815), quotes the German rule as follows, at page 143:

"If the vessel is captured, or wrecked and goes to pieces, so that the vessel and cargo are totally lost, the mariners are entitled to no wages. However, they are not bound to return what they have received in advance. If any part of the vessel is saved; the crew, whether engaged for the voyage or by the month, are to be paid from the materials of the wreck which they have saved."

In the same volume, at page 144:

"According to Dutch, Swedish and Hanseatic Codes, seamen who engage in salvage are entitled to receive a reasonable compensation. But if nothing remains from what is saved, over and above salvage money, no further demands can be made for wages in arrear."

In Molloy's "De Jure Maritimo et Navali" (1744), the earliest outstanding English survey of admiralty law, it is stated at page 249:

"That if the ship do not return, but perishes by tempest, enemy, fire, etc., the mariners shall lose their wages; for if the mariners shall have their wages in these cases they will not use their best endeavors nor hazard their lives to preserve the ship."

1 Sidney 179.

Abbott, Lord Tenterden, in his "Law of Shipping," the English authority of the 19th Century (American edition, 1854, edited by Mr. Justice Storey), says, at page 780:

> "The payment of wages is generally dependent upon the payment of freight. If the ship has earned freight, the seamen who have served on board the ship have in like manner earned their wages and as in general, if a ship destined on a voyage out and home has delivered outward bound cargo but perishes in the homeward voyage, freight for the outward voyage is received. So in the same case, the seamen are entitled to receive their wages for the time employed on the outward voyage, and the unloading of the cargo, unless by the terms of their contract the outward and homeward voyages are consolidated into one."

Marsden, in his "Digest of Shipping, Admiralty & Insurance Law," on page 107, states:

> "The shipowner gets no freight unless the ship unloads, and the seamen lose their wages."
>
> *The Lady Durham*, 3 Haggard, Admiralty Reports 196;
>
> *Thomas v. Hogan*, 3 Haggard, Admiralty Reports 197, note.

It will be seen from these provisions that the issue was strictly confined to the mariners right to wages upon shipwreck of the vessel. Nowhere in the foregoing authorities is it suggested that the shipowner is obligated to return shipwrecked seamen to the port or land of shipment, except for the limited provision that should the mariners assist in salvaging any portion of the ship and cargo, the master should aid them by means of the funds

derived therefrom, in getting back to land, and even to their country.

II. OBLIGATIONS OF SHIP OR SHIPOWNER TO THE CREW UPON SHIPWRECKED CREW; AMERICAN LAW AND USAGE.

1. American Legislation

At the time of the Declaration of Independence the Colonies already had their admiralty courts by virtue of commissions from the Crown. The Colonies practically adopted the jurisdiction of the colonial vice admiralty courts for their own (Hughes, Admiralty Law, 1920, p. 9), and existing rules of maritime law and usage. The following statute of Virginia adopted in 1779, typifies the acts of the Colonies at this time in providing that the admiralty courts—

> "* * * shall be governed in their proceedings and decisions by the regulations of the Congress of the United States of America, by the acts of the general assembly, by the Laws of Oleron and the Rhodian and Imperial Laws, so far as they have been heretofore observed in the English courts of admiralty, and by the laws of nature and of nations."

Seamen were of vital importance to our country at this early period and the Federal Government saw to it that seamen stranded abroad were returned to this country. The following provision is found in the Acts of the first session of Congress, Statutes at Large, Vol. I, §1, Ch. 24, 1792, p. 256, being §7 of "An Act Concerning Consuls and Vice-Consuls":

> "And be it further enacted that to protect the mariners and *seamen employed in vessels belonging*

to citizens of the United States in cases of shipwreck, sickness or captivity, from suffering in foreign ports, it shall be the duty of the consuls and vice-consuls, respectively, from time to time to provide for them in the most reasonable manner, at the expense of the United States subject to such instructions as the Secretary of State shall give and not exceeding an allowance of twelve cents to a man per diem, and all the masters and commanders of vessels belonging to citizens of the United States and bound to some port of the same, are hereby required and enjoined to take such mariners or seamen on board their ships or vessels at the request of said consuls or vice-consuls, respectively, and to transport them to the port in the United States to which such ships or vessels may be bound free of cost or charge, but that the said mariners or seamen shall, if able, be bound to do duty on board such ships or vessels according to their several ability; *provided* that no master or captain of any ship or vessel shall be obliged to take a greater number than two men to every 100 tons burthen said ship or vessel on any one voyage, and if any such master or captain shall refuse the same on the request or order of the consul or vice-consul, said captain or master shall forfeit and pay the sum of Thirty Dollars for each mariner or seaman so refused to be recovered for the benefit of the United States by the said consulate or vice-consulate in his own name, in any port of competent jurisdiction."

Unless compensation for the shipowner was provided in the regulations of the Secretary of State, it was clearly contemplated that shipwrecked seamen should work their way home on American vessels, and the penalty for refusing to take them was $30 per man. This Act was repealed however by §5 of the Act of February 28, 1803, U. S. Statutes at Large, Vol. 2, p. 204, and §4 thereof was substituted for the above quoted section of the Act of 1792.

The new section was in substance almost identical with the repealed section, except that masters of American vessels were bound to transport destitute seamen:

> "* * * on such terms not exceeding $10 per person as may be agreed upon between the said master or consul or commercial agent * * * and if any such captain or master shall refuse the same on the request or order of the consul or commercial agent, such captain or master shall forfeit and pay the sum of $100 to each mariner or seaman so refused."

Section 3 of the Act of 1803 provided as follows:

> "Whenever a ship or a vessel belonging to a citizen of the United States shall be sold in a foreign country, and her company discharged, or when a seaman or a mariner, a citizen of the United States, shall, with his own consent, be discharged in a foreign country, it shall be the duty of the master or commander to pay to such consul, vice-consul or commercial agent for every seaman or mariner so discharged being designated on such list as a citizen of the United States, three months' pay over and above the wages which may then be due to such mariner or seaman, two-thirds thereof to be paid by such consul to each seaman so discharged upon his engagement on board of any vessel to return to the United States, and the other remaining third to be repaid for the purpose of creating a fund for the payment of the passages of seamen citizens of the United States, who may be desirous of returning to the United States, and for the maintenance of American seamen who may be destitute and may be in such foreign ports, and the several sums repaid to such funds shall be accounted for with the Treasury every six months by the persons receiving the same."

Although the protection and care of destitute seamen in foreign ports was meticulously provided for in this Act and the obligations of the shipowner defined in respect

to payment of wages where the seaman is discharged because of the sale of a vessel in a foreign port, and although the laws were passed in the face of existing maritime law and usage which, as pointed out in the preceding section, did not impose upon the shipowner the obligation to return mariners to their port of shipment, *no provision whatsoever is embodied in the Act requiring the shipowner to return shipwrecked seamen.* The above quoted §4 of the Act of February 28, 1803, will be found in substantially the same language and unmodified in effect in Revised Statutes, §4577, U. S. C. A., Title 46, §678, and Revised Statutes, §4578, U. S. C. A., Title 46, §679.

Parsons, Professor of Law at Harvard, in "A Treatise on Maritime Law" (1859), at page 458, says:

> "The right of the sailor to be brought back to his home is very jealously guarded by our laws. Every ship must be provided with the shipping articles and a shipping list, verified under the oath of the master; this he is required to present to the consul or commercial agent of the United States at every foreign port which he visits when so requested, and is under bond to deliver to the boarding officer at the first home port which he reaches, and to produce the persons named therein, that it may be ascertained that he has his whole crew on board. If it appears that any of them are missing, he must account for their absence. If he discharges any of them abroad with his, or their own consent, he must pay to the American Consul of the port (or commercial agent) over and above the wages then due, three months' wages, of which two-thirds are paid to the seaman and one-third retained by the consul and remitted to the Treasury of the United States to form a fund for the maintenance of seamen abroad and for bringing them home. *If*

the discharge is caused by any disaster which breaks up the voyage, so that the ship cannot be repaired and the voyage resumed in a reasonable time and at reasonable cost, the above requirement does not apply to it."

The Act of June 7, 1872, Ch. 322, §33, 17 Stat. 269, specifically terminated the obligation of the shipowner to pay wages after the shipwreck of the vessel:

> "In cases where the service of any seaman terminates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled to wages for the time of service prior to such termination, but not for any further period."

In 1898 this provision was amended (Act of December 21, 1898, Ch. 28, §3), by adding the following provision:

> "Such seamen shall be considered as destitute seamen and shall be treated and transported to the port of shipment as provided in §§4577, 4578 and 4579 of the Revised Statutes of the United States." (Now §§678, 679 and 681, Title 46, U. S. C.)

By the addition of this latter provision in 1898, Congress could scarcely have been more specific in its intention as to the treatment of shipwrecked seamen. If there were any doubts as to how they were to be returned home after the wreck of their vessel and the termination of their wages in pursuance of the Act of 1872, they were dispelled completely by the Act of 1898. As has already been pointed out, the sections referred to, namely Revised Statutes, §§4577, 4578, and 4579, §§678, 679 and 681, Title 46, U. S. C., are the provisions of the Act of February 28, 1803, as amended to date, and they provide specifically for the transportation of shipwrecked seamen at the expense of the Government.

Revised Statutes, §4579; §681, Title 46, U. S. C., derived from the Act of 1803 (2 Stat. 261), was passed July 31, 1894, and was undoubtedly intended to fill in a gap in the existing statutes by providing for the relief of seamen in foreign ports when no consular officer of the United States could assist them under the foregoing provisions. This section provides:

> "Whenever distressed seamen of the United States are transported from foreign ports where there is no consular officer of the United States, to ports of the United States, there shall be allowed to the master or owner of each vessel, in which they are transported, such reasonable compensation, in addition to the allowance now fixed by law, as shall be deemed equitable by the Comptroller General of the United States."

Throughout this entire period, while the Government changed and amended its laws governing the rights of seamen in distress in foreign ports to maintenance and return to the United States, the objective of the Government was not only to insure humane treatment of American seamen, but to protect the interests of the Government in securing the employment of seamen upon American vessels. As stated by Mr. R. B. Taney, in an opinion rendered on November 3, 1931, as Attorney General of the United States (Opinions of the Atty. Gen. II, p. 468), in passing upon the rights of the captain of a vessel to claim compensation for returning a stranded seaman to the United States when the seaman had left the ship before the voyage was completed:

> "The seaman is sent to the United States, not only as an act of justice to him, but also because the public interest requires that he should not be dis-

> charged and set on shore in a foreign port, where he might be tempted to enter into foreign employment, and his services lost to his country. This latter object, which forms one of the chief inducements of the government to pay for his passage, is entirely defeated when the seaman is not actually brought to the United States, * * *."

Without tracing in chronological detail the further developments of the statutes here in question, it is sufficient to say that the entire law relative to the mutual rights and duties between the shipowner and the crew and the obligations of the United States Government, was revised and restated in the Act of December 21, 1898, Chap. 28 (30 Stat. 755). There are twenty-six sections in this Act of which six deal with the matter of securing for the seamen the right to transportation home or satisfactory employment on another vessel from a foreign port. It is obvious that these six sections were intended to cover every circumstance under which a seaman would leave or become separated from his vessel in a foreign port. They may be summarized as follows:

1. Where a seaman leaves a vessel because she was previously sent to sea in an *unseaworthy state by neglect or design of the owner.* (§11). (Revised Statutes, 4561; §658, Ch. 18, Title 46, U. S. C.)

2. Where a seaman is discharged because his *vessel is sold abroad* (§17). (Revised Statutes, §4582; §684, Ch. 18, Title 46, U. S. C.)

3. Where a seaman leaves because the *voyage is continued contrary to agreement* (§18). (Revised Statutes, 4583; §685, Ch. 18, Title 46, U. S. C.)

4. Where a seaman leaves because the *vessel is badly provisioned or unseaworthy* (§18). (Revised Statutes, 4583; §685, Ch. 18; Title 46, U. S. C.)

5. Where a seaman leaves because he had had *cruel treatment* (18). (Revised Statutes, 4583; §685, Ch. 18, Title 46, U. S. C.)

6. Where a seaman leaves because he has been *accused of insubordination* (§21). (Revised Statutes, 4522; §703, Ch. 18, Title 46, U. S. C.)

7. Where a seaman is discharged because his *vessel has been lost or wrecked* (§3). (Revised Statutes, 4526; §593, Ch. 18, Title 46, U. S. C.)

8. Where a seaman is *discharged because he is incapacitated* for further service on the vessel by illness or injury (§16). (Revised Statutes, 4581; §683, Ch. 18, Title 46, U. S. C.)

In the first six of these cases, the obligation was definitely imposed upon the master of the vessel and therefore upon the shipowner, to provide the seaman with passage or secure employment for him on another vessel. The Consul was made the judge of the facts as to the sufficiency of the seaman's grounds for leaving the ship, and is in all cases charged with the duty of seeing that the master and shipowner fulfill their obligation to the seaman. In the seventh and eighth cases the obligation was imposed upon the Government, the seventh case being embodied in §3 of the Act (Revised Statutes, §4526), and restated entirely from the old enactment discussed above, as follows:

> "In cases where the service of any seaman terminates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled for wages for the time of service prior to such termination, but not for any further period. Such seaman shall be considered a destitute seaman and shall be treated and transported to port of shipment as provided in §§4527, 4578 and 4579 of the Revised Statutes of the United States."

In conclusion of this review of the history of the foregoing sections at issue which reveal the unmistakable intent of Congress to impose upon the Government the responsibility of returning shipwrecked seamen, the report of the Committee on the last quoted section is submitted as practically conclusive of this intent:

> "R. S. 4526 now provides that where a seaman is wrecked abroad before the termination of his voyage, he shall be entitled to his wages up to the time his services terminate, but nothing more, from the master or owner. * * *
>
> "This section is the present custom in most cases where the shipwrecked seaman depends on the consul to send him home, though in cases where the seaman has wages coming to him he is usually required to turn them in toward meeting the expenses of his passage home. The British law is based on the theory that where, by an act of God, the sailor is left in a foreign land, the Government should bring him home. Such is the theory of this section. This section and others are drafted with a view to treating seamen on American vessels as Americans in fact, or as such prospectively through naturalization."

2. American Decisions; Statutes Construed

In an early American decision entitled *Henop v. Tucker*, Case No. 6,368, 11 Fed. Cases 1139, C. C., S. D., N. Y., 2 Paine 151 (the date of the case not being given although it apparently falls between 1827 and 1840, the inclusive dates of Paine's reports), two seamen filed libels against Henop as owner of a brig for recovery of two months' wages claimed to be due on their discharge from the brig at Cork under the Act of 1803 (2 Stat. 203) quoted supra. The vessel had been damaged at sea and upon

being surveyed at Cork was abandoned to the underwriters, the repairs necessary being estimated at five-sixths of the value of the ship. As to whether or not the vessel came within the category of wrecks or had merely been voluntarily sold, thereby entitling the seamen to additional wages, the court said at page 1140:

> "I am not aware of any direct decision upon this point, either in the English or American courts. No case has been referred in the English or American courts. No case has been referred to on the argument where it has been expressly adjudged. The question must, therefore, be decided upon general principles, growing out of the contract of seamen for wages. *It is admitted to be the settled rule, that in case of shipwreck, when there is a total physical destruction of the vessel, this will dissolve the contract for wages; but it is said, that when there is only a technical total loss, the contract is not ipso facto dissolved. I am not aware of any case where such a distinction has been intimated; and I cannot discover any solid grounds upon which it can be maintained.* * * *
>
> "*But where the voyage is broken up without any fault of the master or owners, by perils of the sea or a vis major, against which they could not guard, and by reason whereof no further beneficial service could be rendered by the seamen in navigating the vessel, no injustice is done the seamen in such case, if, according to the principles of the maritime law, this is understood to be a contingency upon the happening of which the contract for wages is dissolved, according to the true intent and understanding of the parties.* It certainly cannot be maintained that a seaman is, in all cases, entitled to receive his full wages, when the voyage is broken up without any fault or misconduct chargeable upon him."
>
> *The Saratoga*, Fed. Case 12,355 (1814), 21 F 476.

A similar suit was brought in the case of *The Dawn*, Fed. Case No. 3,665, 7 Fed. Cases 200 (1839), in which

case there is a second decision, Case No. 3,668, 7 Fed. Cases 204 (1841). Plaintiff was paid to the time of discharge when the ship was condemned and sold in Bermuda. Here again the principal question was whether the vessel was damaged by perils of the sea to an extent which made her sale a necessity or whether she was merely sold for the best interests of the owners. After quoting the Act of 1803, requiring payment of three months' wages on the discharge of seamen in a foreign port where the vessel is sold by the owner, two months' wages to go to the seaman and one month's pay to be retained by tne Government to make a fund for the relief of seamen, the court said at page 202, speaking through Mr. Justice Ware:

> "If it had been the intention of the legislature to comprehend cases of a forced and necessary dissolution of the contract, as by shipwreck, capture, seizure and forfeiture of the vessel without the fault of the master or owners, or by any fortuitous occurrence against which human foresight and power could not provide, we should have expected some words would have been used indicative of such an intention. * * * It is not gratuitously to be supposed that the legislature intended to raise a fund even for charitable purposes, by a tax on calamity and misfortune. * * * "

And again at page 204, after examining into the character of the maritime contract of employment and the application of the ordinary rules of contract thereto, the court said:

> "*Upon the general principles of the contract of hiring, the hirer is not responsible when the performance of the contract on his part is rendered impossible by an accident of major force; for no one*

> *is responsible for fortuitous events, unless he takes these risks upon himself by the express terms of the contract.* The construction which has been put upon the statute is in this particular conformable to the general rule of law; it is that the statute does not extend to a case where the sale of the vessel is rendered necessary by such an accident, and of course in such a case the statute damages are not due."

The second decision in *The Dawn* reviews thoroughly the authorities of early maritime law and usage as set forth in the first section of this brief, and the court recognizes the old rule indicated in Section I hereof, that the crew are entitled to compensation if they save the ship, or to payment of their expenses home out of the proceeds.

See also—

Hoffman v. Yarrington (1867), Case No. 6,580, 12 Fed. Cases 307.

In the case of *Drew v. Pope* (1871), Case No. 4,080, 7 Fed. Cases 1071, a similar question is involved, a vessel having been disabled by a typhoon and having put back to Hong Kong where she was sold because it did not pay to repair her. After citing the case of *The Dawn*, supra, and reiterating its recognition of the old rule that the crew were entitled to compensation for salvaging the vessel, the court then said, at page 1073:

> "At the time this decision was rendered, the Act of August 18, 1856, had not been passed. By that Act it is expressly provided, that in cases of wrecked, or stranded vessels, or vessels condemned and sold as unfit for service, no payment of extra wages shall be required (11 Stat. 62). *In this Act, and the Act of 1840, to which it is an amendment, the attention of Congress was specially directed to the subject of*

securing to seamen discharged abroad the means of returning to their homes. * * *

"*It may therefore be justly concluded that Congress, in this class of cases, intended to exempt the master from the duty of providing means for the return of the seamen;* and, if so, the provision in question must be taken as repealing or superseding the rule of the maritime law, as declared by Mr. Justice Ware, even if such a rule had theretofore been recognized and established in our jurisprudence."

Similarly in the case of *Gallagher v. Murray*, Case No. 5,193, 9 Fed. Cases 1087 (1879), a vessel which had not completed its voyage, due to having struck upon a rock, was abandoned as being too badly damaged to repair. The court said, at page 1087:

"*Wreck, stranding or other fatal disability to the ship is recognized as discharging the contract between the ship and the seamen;* * * *."

The case of *Kelly v. Otis* (1885), 23 Fed. 903, gives a clear and decisive interpretation of the statute here construed. The vessel sailed from Minatitlan for the port of New Orleans, encountered heavy head seas and storms which so damaged the vessel that she was compelled to put back to the port of departure. A survey was held and it was found that the vessel could be repaired only at exorbitant expense which would far exceed her value when completed. The vessel was accordingly sold under the authority of the consul. Members of the crew sued for three months' advance pay, for $25 expense in getting passage home, and for $10 expense of board in the foreign port while waiting to get passage home. In sustaining the decree of the District Court dismissing the libel, the Circuit Court said, at page 905:

"The general maritime law which, in a case of *seminaufragium*, or where the vessel was condemned and sold as too unseaworthy to be repaired, gave discharged seamen passage home, and wages up to the time of reaching home, *is unquestionably affected and modified by the statutes of the United States, which provide for all cases of discharge of seamen in foreign ports, and, in case of destitute seamen, their return home by the consular agents of the United States at the expense of a fund derived from the one-third of the three months' extra wages, collected by the consul or agents from all American ships discharging seamen in foreign ports, except where ships are stranded or wrecked, or condemned as unfit for service.* * * *

"Entertaining these views of this case, it follows that the extra wages demanded must be refused, because the schooner was condemned in a foreign port as unfit for sea service, and the demand for expenses in returning home incurred by libelants must be rejected because no fraud nor bad faith existed on the part of Otis, considering him as the responsible owner." (Italics ours).

The cases reviewed above were cited in the decision. A later case bearing upon this same subject is the case of *The Edna* (1923), 291 Fed. 379, construing Revised Statutes §4526; Title 46, §593, U. S. C., a case in which the vessel had been lost to the owners by reason of her capture. The court said, at page 380:

"The service of libelants terminated on January 27, 1916, by reason of the loss of the vessel to her owners, due to her capture by the British as a prize. Libelants thereafter performed no service, and so far as appears left the owners to contest the capture as best they could. *They were then under the statute destitute seamen, and entitled under the foregoing section to transportation to the port of shipment.*" (Italics ours).

The latest case is that of *The Eastern Glen*, 1932

A. M. C. 133 (So. D., N. Y.), a case which falls within the eighth class of seamen destitute in foreign ports as provided by the Act of 1898 reviewed above, namely cases in which seamen are discharged because incapacitated for further service on the vessel by illness or injury. On account of the serious condition of the seaman the plaintiff's shipowner transported him to New York with a doctor and a nurse to accompany him, at an expense of $4,754.77. The plaintiff brought suit against the Government based on the proviso of §683, Title 46, U. S. C., providing that the cost of maintenance and return to the United States should be borne by the United States in such cases. The court held that this section had to be construed with §§678, 679 and 680 of Title 46, U. S. C., which require that the consul shall make all arrangements for the transportation, agreeing with the master of the vessel as to the compensation to be paid therefor, as was done in the instant case. The court said in conclusion:

> "Inasmuch as the requirements of §§678, 679 and 680 have never been complied with, the disbursements of the plaintiff must be deemed voluntary, and as such not recoverable."

It will be noted that the decision is not predicated upon the ground that the ***shipowner was obligated to bring the seamen back*** to the United States, but solely and exclusively upon the ground that ***requirements of the above cited sections had not been complied with.*** In this case the requirements of these sections have been completely satisfied (Ex. 7, R. pp. 31-37, 40).

Numerous decisions of the Comptroller General refusing the allowance of compensation to a shipowner

who had brought his own crew back to the United States, were based upon similar grounds, namely non-compliance with the above cited sections. In the case of *The Pennsylvania*, 3 Comp. Gen. Rep. 148, the Pacific Mail Line took the crew of the PENNSYLVANIA, destroyed by fire in a port of Chile, on board the URBUBAMA, another vessel of the same line, no certificate being issued by the American Consul as required by Revised Statutes §4578, Title 46, §679, U. S. C. As the Comptroller correctly stated at page 149, the above section—

> "* * * provides as conditions precedent to payment from public funds for the subsistence and transportation of destitute seamen to the United States: (1) That the consul or vice-consul shall request the transportation; (2) that the consul and master of the transporting vessel shall agree within maximum limits on the cost of transportation; and (3) that the consul shall issue destitute seamen certificates for the transportation."

After considering the facts, the Comptroller General stated, at page 150:

> "There was no agreement between the consul and the master as to the cost of transporting the seamen, nor were destitute seamen certificates issued by the consul for the transportation and subsistence; nor is the claim within the spirit of the law, no intention appearing therein to reimburse the owner of a lost ship for expenditures made in transporting its own seamen to the United States.
>
> "As soon as the owners of a wrecked vessel take up the burden of subsisting and transporting the members of the crew they cease to be destitute seamen on the hands of the consul and claimant may not be reimbursed from public funds for any part of the cost to it of the transportation and subsistence

expenses of the crew of the steamship PENNSYLVANIA to a port in the United States."

As is correctly stated in respondent's brief, other decisions of the Comptroller are to the same effect (3 Comp. Gen. (1924) 575; 4 i. d. (1924) 118; i. d. (1924) 252; i. d. (1924) 340; i. d. (1924) 483; i. d. (1924) 542; i. d. (1925) 632; 5 i. d. (1926) 623; 6 i. d. (1927) 723; 8 i. d. (1928) 211), all of which are executive and not legal opinions. Furthermore, they do not, as contended by the respondent, represent a construction placed upon the statute in question by a department charged with its administration. The Department of Commerce and not the Treasury Department is charged with the administration of the statutes here involved. The Comptroller General has himself recognized this by saying in 4 Comp. Gen. Rep. 252, at 253:

> "*While the duties of consular officers with respect to the enforcement of the rights of the seamen and the liability of the vessels or their owners are not primarily for the determination of this office* except insofar as it affects payments made by such consular officers from public funds, you are advised, * * *."

The Department of Commerce has regularly and consistently recognized that the *destitute status of seamen is established at shipwreck.* Thereafter seamen are charges of the government to be sent home at its expense upon the issuance of a shipwrecked seaman's certificate. The doctrine that the shipowner still remains under an obligation to the seamen to bring them back to port of shipment, has been engrafted onto the law by the Comptroller General himself, in the face of the history of maritime law on this point, briefly reviewed in the first section of

this brief, and in face of the foregoing decisions by American courts, squarely holding that the seaman's contract is terminated.

But, disregarding the law, what are the logical consequences of the Comptroller's position? He concedes that the compensation which this action was brought to recover would be paid—and that such compensation has been regularly paid for over thirty years for transporting shipwrecked crews from the Alaskan ports to the United States, *if the owner of the transporting vessel does not also own the wrecked vessel.**

But why should the government pay any shipowner if the obligation rests upon the owner of the wrecked vessel to take its crew home? If such an obligation exists, must not the owner of the wrecked vessel either send a ship to bring the crew back, or at least pay compensation to another who discharges the obligation for him?

The Comptroller apparently limits his doctrine to cases in which the owner of the wrecked vessel happens to have a vessel available to bring the shipwrecked crew back. If this be true, how near to the stranded crew must the vessel be before the obligation "takes hold" requiring it to pick up the destitute seamen in satisfaction of the owner's obligation.

And lastly, will the statutory compensation be paid if the vessel, rendering the service, is partially and not wholly owned by the owner of the wrecked vessel, and if so, should not payment be made only in proportion

*It was even proved in this case that the petitioner herein had, in three instances, been paid compensation for transporting to Seattle the crews of its own wrecked vessels, and the Findings of Fact so show (R. 45), contrary to the statement in respondent's brief, page 6, footnote 2.

to the interest of the other owners? By what method and by whom will the ownership of the vessel rendering the service be determined?

It is believed that these questions sufficiently expose the absurdity of the Comptroller's position. It is respectfully submitted that District Judge Neterer was correct in his decision on demurrer when he said (1930 A. M. C. 1907):

> "Shipowners whose vessels are wrecked all stand in the same relation and have the same right under the statute * * *,"

and that the Circuit Court of Appeals, although in error in affirming the decree of dismissal on other grounds, was entirely correct in holding that ownership was not material if the right of recovery was otherwise present (R. 78).

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 954

ALASKA STEAMSHIP COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 51–54) is reported in 60 F. (2d) 135. The opinion of the Circuit Court of Appeals (R. 69–78) is reported in 63 F. (2d) 398.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 13, 1933 (R. 79). The petition for certiorari was filed May 10, 1933. The jurisdiction of this Court is invoked under Section

240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether under the statutes and regulations providing for the return to this country of destitute or shipwrecked seamen, a vessel owner is entitled to recover from the Government compensation for transporting on one of its own vessels the crew of another vessel owned and operated by it, which had become disabled in Alaska.

STATUTES INVOLVED

The statutes involved are set forth in the Appendix, *infra*, pp. 9–12.

STATEMENT

This was a suit to recover compensation for the transporation of shipwrecked seamen from Alaska to the United States. Trial by jury was waived by a written stipulation (R. 16). The District Court rendered a memorandum opinion which by order of the court was to be entered also as its findings of fact and conclusions of law (R. 54). The findings of fact of the District Court (R. 51–53) may be summarized as follows:

In December 1929 the S.S. *Depere*, owned and operated by petitioner, was wrecked on the southeastern coast of Alaska and was unable to proceed on its voyage. Its crew of thirty-five seamen was taken to Ketchikan, Alaska, where the customs office, by the deputy collector of that port, provided

subsistence for the crew. (R. 51.) The deputy collector arranged with the master of the S.S. *Yukon,* also owned and operated by petitioner, to transport the crew from Ketchikan to the port of Seattle, Washington, the *Depere's* debarking port. He agreed that the sum of $13.24 for each seaman, or a total of $397.20, should be paid for the transportation of the shipwrecked crew. (R. 51.) The crew was transported in the *Yukon* to Seattle and their landing at that place was certified by the United States Collector of Customs at Seattle. Thereafter, petitioner transmitted to the Treasury Department of the United States, together with a statement of account for the transportation, the certificate issued by the deputy collector at Ketchikan authorizing the transportation and providing for compensation. (R. 51–52.) Payment of the compensation provided for by the certificate was denied by the Comptroller General on the ground that:

> The duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the owner or operator and where this duty has been undertaken the appropriation for the "Relief and Protection of American Seamen" is not available to reimburse the owner or operator for the expense incurred in performing such duty (R. 52).

The shipping articles contained provisions that the seamen were bound to serve for a term of time not exceeding two months on a cruise to Alaskan and Canadian ports and return to a final port of discharge in the United States; benefits accruing to

the seamen under the articles were wages, maintenance, and medical attendance and cure during the voyage, and also the right to be returned to a port of the United States (R. 52–53).

The District Court dismissed the petition (R. 17), on the ground that the owner of a vessel could not claim reimbursement for the expense of returning the crew of one of its vessels by another of its own ships (R. 54). The Circuit Court of Appeals affirmed the judgment of the District Court (R. 79), but on the ground that the certificate sued upon was issued by a deputy collector of customs not authorized by statute to issue certificates for the transportation of destitute and shipwrecked seamen (R. 77–78).

ARGUMENT

Petitioner contends that the statutes providing that distressed American seamen should be repatriated at the expense of the Government, upon certificates issued by Government agents at the ports in which the destitute seamen are found, apply not only to foreign ports, but also to ports in Alaska and other Territories and possessions of the United States. This view was rejected by the court below on the ground that no provision was made for the issuance of certificates except by consular agents. In the instant case the seamen for whose transportation petitioner now sues, were shipwrecked on the coast of Alaska. Since there are no consular agents of the United States in

Alaskan ports, the court below held that there was no authority in any Government officer in that Territory to arrange for repatriation of the crew of the S.S. *Depere* or to bind the Government to compensate for their transportation.

We consider it unnecessary to examine the question whether, in general, provision has been made by Congress for paying the expenses of repatriation from Alaska of destitute American seamen. In the present case the transported seamen had been employees of petitioner on a vessel owned and operated by it; their transportation from Ketchikan, Alaska, to Seattle, Washington, was by another vessel owned and operated by petitioner. The District Court held in these circumstances that the owner of a vessel meeting with disaster should not be allowed compensation for returning the crew to a port in the United States by another of its vessels. This conclusion, while not approved by the Circuit Court of Appeals, is, we submit, correct.

The conclusion of the District Court is in harmony with the construction placed upon the statutes by the Comptroller General, the officer charged with the duty of making disbursements from the appropriation set apart by Congress to fulfill the purposes of the statute. See 3 Comp. Gen. 148; 4 Comp. Gen. 118; 4 Comp. Gen. 252; 4 Comp. Gen. 390; 4 Comp. Gen. 483; 4 Comp. Gen. 632; 5 Comp. Gen. 623; 6 Comp. Gen. 723; 7 Comp. Gen. 3; 7 Comp. Gen. 363; 8 Comp. Gen. 194. Moreover, the

Consular Regulations of the United States,[1] affecting the performance of duties by consuls and consular agents and containing directions concerning the issuance of certificates for compensation, have recognized the force of these rulings and are in accord with them. See Consular Regulations, March 1928, XVI-3, 4; and see also Consular Regulations, February 1931, XV-12, 13, 14; XVI-1, 2. The rulings of the Comptroller General and the Consular Regulations determine the limitations within which the controlling appropriations may be disbursed. They determine that the liability of the United States for the transportation of shipwrecked seamen is dependent upon a condition of distress or destitution which cannot exist if the owner of the shipwrecked vessel is in a position to furnish the transportation necessary to repatriate the crew of one of its own shipwrecked vessels.[2]

Subsequent to the promulgation of these rulings Congress by the Act of May 7, 1930, c. 227, 46 Stat. 261 (U.S.C. Sup. VI, Title 46, Sec. 679), reenacted the previously related statutes respecting compen-

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[1] Consular Regulations are issued by the President under authority of R.S., Sec. 1752 (U.S.C., Title 22, Sec. 132), and have the force of law. Cf. *Ex parte Reed*, 100 U.S. 13, 22.

[2] While there is testimony in the record that in 1909 or 1910 and in 1918, payments were made to petitioner as compensation for repatriating the crews of ships owned and operated by it (R. 39), there is no finding to this effect. Nor is there any indication that the alleged payments were made with full knowledge of all the facts bearing on the liability of the Government. So far as we are advised, there

sation of vessels for transporting seamen. The consistent construction and administration of these statutes by the officers charged with their application should be regarded, in view of the reenactment of the legislation, as an authoritative interpretation. See *Massachusetts Mutual Life Ins. Co.* v. *United States,* 288 U.S. 269, 273; *Costanzo* v. *Tillinghast,* 287 U.S. 341, 345; *Interstate Commerce Commission* v. *New York, N. H. & H. R. Co.,* 287 U.S. 178, 190.

There is no dispute concerning petitioner's ownership and operation of both the shipwrecked vessel and the vessel upon which the shipwrecked crew was transported to Seattle. We contend that the Comptroller General properly refused to compensate petitioner for the performance of services for which it was primarily liable, and that the result reached by the court below was correct.

CONCLUSION

The question presented by the petition is not necessary to a decision of the case, and it does not seem to be of general importance. It is conceded

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is no instance wherein there has been recognition of the right of an owner of a vessel on which destitute seamen last served to collect from the United States the expenses of their repatriation; on the contrary, we are informed that in every case, except in a case of established desertion (3 Comp. Gen. 936), the accounting officers of the Government have held that the owner may not recover on such a claim under the seamen relief appropriations.

that there are no conflicting decisions. We submit that the result reached below was correct and that the petition for certiorari should be denied.

Respectfully submitted.

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JUNE 1933.

APPENDIX

STATUTES INVOLVED

Sec. 4578, Revised Statutes, as amended (U.S.C., Title 46, Sec. 679):

> *Transportation of destitute seamen to United States.*—All masters of vessels of the United States, and bound to some port of the same, are required to take such destitute seamen on board their vessels, at the request of consular officers, and to transport them to the port in the United States to which such vessel may be bound, on such terms, not exceeding $10 for each person for voyages of not more than thirty days, and not exceeding $20 for each person for longer voyages, as may be agreed between the master and the consular officer, when the transportation is by a sailing vessel; and said consular officer shall issue certificates for such transportation, which certificates shall be assignable for collection. If any such destitute seaman is so disabled or ill as to be unable to perform duty, the consular officer shall so certify in the certificate of transportation, and such additional compensation shall be paid as the Comptroller General of the United States shall deem proper. Every such master who refuses to receive and transport such seamen on the request or order of such consular officer shall be liable to the United States in a penalty of $100 for each

seaman so refused. The certificate of any such consular officer, given under his hand and official seal, shall be presumptive evidence of such refusal in any court of law having jurisdiction for the recovery of the penalty. No master of any vessel shall, however, be obliged to take a greater number than one man to every one hundred tons burden of the vessel on any one voyage or to take any seaman having a contagious disease.

Act of January 3, 1923, c. 21, Title I, 42 Stat. 1072 (U.S.C., Title 46, Sec. 680):

That hereafter the amount agreed upon between the consular officer and the master of the vessel in each individual case not in excess of the lowest passenger rate of such vessel and not in excess of 2 cents per mile, together with such additional compensation for transporting sick or disabled seamen as is now provided by law, shall in each case constitute the lawful rate for transportation on steam vessels.

Sec. 4579, Revised Statutes, as amended (U.S.C., Title 46, Sec. 681):

Additional allowance for transportation of destitute seamen.—Whenever distressed seamen of the United States are transported from foreign ports where there is no consular officer of the United States, to ports of the United States, there shall be allowed to the master or owner of each vessel, in which they are transported, such reasonable compensation, in addition to the allowance now fixed by law, as shall be deemed equitable by the Comptroller General of the United States.

Sec. 4577, Revised Statutes, as amended (U.S.C., Title 46, Sec. 678):

> *Subsistence to destitute seamen; return to United States.*—It shall be the duty of the consuls and vice consuls, from time to time, to provide for the seamen of the United States, who may be found destitute within their disfricts, respectively, sufficient subsistence and passages to some port in the United States, in the most reasonable manner, at the expense of the United States, subject to such instructions as the Secretary of State shall give. The seamen shall, if able, be bound to do duty on board the vessels in which they may be transported, according to their several abilities.

Appropriation Acts providing relief for shipwrecked American seamen on the coast of Alaska have been enacted annually since 1896. Except in 1922 and 1923, the provisions of these Appropriation Acts with respect to the Territory of Alaska have been substantially the same. The Act making appropriations for the Department of State for the fiscal year ending June 30, 1930, approved January 25, 1929 (c. 102, 45 Stat. 1098), reads:

> For relief, protection, and burial of American seamen in foreign countries, in the Panama Canal Zone, and in the Philippine Islands, and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, in Porto Rico, and in the Virgin Islands, $70,000.

The similar appropriations made in 1922 and 1923 (c. 204, 42 Stat. 603; c. 21, 42 Stat. 1072), save for the amount, contain a proviso not appearing in

previous or later Appropriation Acts, the Act approved June 1, 1922, reading as follows:

> For relief and protection of American seamen in foreign countries, and in the Panama Canal Zone, and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, Porto Rico, the Philippine Islands, and the Virgin Islands, $220,000; *Provided,* That no part of this appropriation shall be available for payment for the transportation on steam vessels of any seamen in excess of the amount agreed upon between the consular officer and the master of the vessel in each individual case; and hereafter the amount so agreed upon not in excess of the lowest passenger rate of such vessel and not in excess of 2 cents per mile, together with such additional compensation for transporting sick or disabled seamen as is now provided by law, shall in each case constitute the lawful rate.

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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 56

ALASKA STEAMSHIP COMPANY, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the District Court [1] (R. 51–54) is reported in 60 F. (2d) 135. The opinion of the Circuit Court of Appeals (R. 69–78) is reported in 63 F. (2d) 398.

[1] Although this is a Tucker Act proceeding, the record includes findings of fact and conclusions of law (R. 41–50) submitted by petitioner's counsel to the trial court. These are not to be confused with the court's findings and rulings which appear in quotations and indented on pages 51–54 of the Record.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered February 13, 1933 (R. 79). The petition for certiorari was filed May 10, 1933, and was granted October 9, 1933. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, under the statutes and regulations providing for the return to this country of destitute or shipwrecked seamen, a vessel owner is entitled to recover from the Government compensation for transporting on one of its own vessels the crew of another vessel owned and operated by it which had become disabled in Alaska.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, pp. 20–23.

STATEMENT

The S.S. *Depere*, owned by petitioner, en route from Cordova south to Ketchikan, Alaska, November 15, 1929, struck a rock off Cape Decision near Ketchikan, which required her to be beached. She became totally disabled and unable to complete her voyage (R. 30).[2] In response to radio messages,

[2] The New York Maritime Register, published weekly, shows under date of November 18, 1929, that two steamers were sent from Seattle, Washington, to salvage the vessel; November 23, 1929, floated and taken into Port MacArthur;

a Coast Guard cutter, on November 16, 1929, came to the wreck and took aboard thirty men, and the following day returned them to the port of Ketchikan, Alaska, to which the steamship was bound (R. 30–31). It is proper to assume that the master and chief engineer remained by the vessel, as they do not appear on the list of thirty men which were removed by the cutter and later returned to Seattle (R. 33–35). The Deputy Collector of Customs provided the crew with lodging and subsistence at Ketchikan, and on November 20, 1929, under Section 4578 R.S., as amended (U.S.C., Title 46, Sec. 679) (*infra*, p. 20), required the master of the *Yukon*, then en route from Alaskan ports to Seattle, which had stopped at Ketchikan, to carry from Ketchikan to Seattle the thirty members of the crew of the *Depere*, issuing a certificate fixing the compensation for transportation and agreeing with the master that upon presentation of the certificate at the Treasury Department, properly endorsed, the master would be entitled to receive the passage money (R. 31–37). The *Yukon* landed these men at Seattle on November 22, 1929 (R. 37).

The Comptroller General, upon presentation of the certificate, declined payment, for the reason that the duty of relieving and transporting the crew of shipwrecked vessels is primarily that of the

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November 29, 1929, the *Depere* left Ketchikan in tow and arrived at Seattle December 6, 1929, when cargo was discharged; December 9, 1929, the *Depere* drydocked. The vessel after repairs resumed service the following July.

owner or operator, and where this duty has been undertaken, the appropriation for the "Relief and Protection of American Seamen" is not available to reimburse the owner or operator for the expense incurred in performing such duty (R. 38).

This suit under the Tucker Act, based upon the certificate issued by the Deputy Collector of Customs was then instituted to recover the transportation charges (R. 1–8). In addition to these facts established at the hearing, evidence was also introduced that in three instances of previous disasters, in 1909 or 1910, and 1918, crews of petitioner's vessels shipwrecked in Alaskan waters had been returned on their other vessels and the transportation charges evidenced by like certificates paid (R. 39). The articles under which the crew of the *Depere* had shipped called for a voyage from the port of Seattle, Washington, to Ketchikan, Alaska, and such other ports and places in any part of Alaska and B.C. as the master might direct, and back to a final port of discharge in the United States (R. 52, 75).

The District Court (Neterer, J.) denied the claim, holding that when the seamen were returned upon another of its vessels the petitioner had only discharged its obligation to return them. The primary object of the related legislation was the relief of destitute seamen and not to benefit the steamship company. When the men were delivered to the *Yukon* they were no longer destitute (R. 54).

The Circuit Court of Appeals, although declining to adopt these rulings of the District Court, affirmed the judgment on other grounds. It considered that the suit to recover such transportation charges was rested solely upon the certificate issued by the Deputy Collector of Customs, the sole authority for which was Sections 4577 and 4578 R.S., as amended (U.S.C. Title 46, secs. 678, 679). These sections specifically limit such arrangement and the authority to issue such certificates solely to consular officers. It concluded that a certificate issued by a deputy collector of customs was not by a consular officer, and that judgment could not be entered based upon such a certificate. In similar situations, however, the administrative practice has been, as we are informed, for collectors and deputy collectors of customs to issue certificates such as would be issued by consular officials in foreign ports, and the Comptroller General has not refused to honor or pay any certificate thus issued by a collector or deputy collector in Alaska. His refusal in this case was not upon the ground that the deputy collector had no authority to act, but upon the ground that it was the duty of the petitioner, itself, as the owner or operator of the vessel, to transport the crew back to Seattle (R. 47–48). The District Court put its decision on substantially the same ground as the Comptroller General (R. 54).

SUMMARY OF ARGUMENT

1. This suit to recover transportation charges for the returned seamen, by the pleadings, was rested solely upon the certificate issued by the deputy collector of customs under assumed authority of R.S., Sections 4577 and 4578, as amended (U.S.C., Title 46, Secs. 678, 679), as establishing the indebtedness. These sections specifically limit the issuance of such certificates by consular officers. Deputy collectors of customs are not consular officers. Any payment for the services rendered, if there be the right thereto, must be rested upon a cause other than an indebtedness evidenced by the certificate itself.

2. The Comptroller General, since the question first received consideration, has uniformly ruled that when the owner of a wrecked vessel returns the members of the crew by another of its vessels, such owner may not be reimbursed from public funds for the costs of such transportation. Subsequent to these rulings, Congress reenacted the previously related statutes. Consistent construction in the administration of these statutes by the fiscal officer should be regarded as the authoritative interpretation of the related acts.

3. In returning the seamen, the petitioner only performed an obligation which the law imposed upon him and he is not entitled to be reimbursed for such transportation expense. This follows the practice in Great Britain. It is stated that this obligation is modified by the last sentence of Sec-

tion 4526, R.S., as amended (U.S.C., Title 46, Sec. 593). That provision intended to give American seamen the same status as British seamen. It should not be construed as giving owners of American vessels greater rights than British owners have under their laws.

ARGUMENT

I

The first related Act, Act of April 14, 1792, c. 24, 1 Stat. 254, 256, required the return of destitute seamen by shipmasters to be made upon the request of consuls or vice consuls. Section 4 of the supplemental Act of February 28, 1803, c. 9, 2 Stat. 203, 204, placed the duty upon "Consuls, vice-consuls, commercial agents, vice-commercial agents of the United States." These substantial requirements were carried forward as Sections 4577, 4578, and 4579 of the Revised Statutes. Section 9 of the Act of June 26, 1884, c. 121, 23 Stat. 53, 55, amended these sections and, as amended, they became Sections 679, 680, and 681 of Title 46, U.S. Code. (See Appendix, *infra,* pp. 20–23). They require (R.S. 4578, as amended) "all masters of vessels * * * to take such destitute seamen on board their vessels at the request of *consular officers,* and to transport them to the port of the United States" on such terms "as may be agreed between the master and the consular officer, when the transportation is by a sailing vessel; and said consular officer shall issue certificates for such transportation, *which certifi-*

cates shall be assignable for collection." (Italics ours.) The certificate issued here by the Deputy Collector of Customs (R. 8–13) evidences an agreement between the Deputy Collector and the master of the steamship *Yukon,* owned by petitioner, and was presented for payment by the petitioner.

Appropriations for the State Department providing relief for shipwrecked American seamen in the Territory of Alaska have been passed annually since 1896. Except for the years 1922 and 1923, the provisions of these Acts have been substantially the same. The Act making appropriations for the Department of State for the fiscal year ending June 30, 1930, approved January 25, 1929 (c. 102, 45 Stat. 1094, 1098) reads:

> For relief, protection, and burial of American seamen in foreign countries, in the Panama Canal Zone, and in the Philippine Islands, and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, in Porto Rico, and in the Virgin Islands, $70,000.

Similar appropriations in 1922 and 1923 (c. 204, 42 Stat. 599, 603; c. 21, 42 Stat. 1068, 1072) are in the same wording but have a proviso not appearing in previous or later Appropriation Acts. The proviso in the Act approved June 1, 1922, reads (42 Stat. 603):

> *Provided,* That no part of this appropriation shall be available for payment for the transportation on steam vessels of any seamen in

excess of the amount agreed upon between the consular officer and the master of the vessel in each individual case; and hereafter the amount so agreed upon not in excess of the lowest passenger rate of such vessel and not in excess of 2 cents per mile, together with such additional compensation for transporting sick or disabled seamen as is now provided by law, shall in each case constitute the lawful rate.

"Consular officer" is defined by statute to include "consuls general, consuls, vice consuls, interpreters in consular offices, student interpreters, and consular agents, *and none others.*" (Italics ours.) (Act of February 5, 1915, c. 23, Sec. 6, 38 Stat, 806; U.S.C., Title 22, Sec. 51.)

Deputy collectors of customs are appointed by the Secretary of the Treasury, who prescribes and designates their duties where they are not otherwise defined by law (U.S.C., Title 19, Sec. 6). Article 1319 of Customs Regulations, 1931, states their duties to be "under the general supervision and direction of the collectors, receive entries of merchandise, collect duties, fees, and other moneys, enter and clear vessels, issue documents to vessels, and perform all other services prescribed by law, the regulations of the department, or the instructions of the collector."

From this review it clearly appears that deputy collectors of customs are not consular officers. The certificates upon which the present claim alone is

rested are without authority of law.[3] Any payment for the services rendered, if there be the right thereto, must be rested upon a cause other than an indebtedness evidenced by the certificate itself.

The only authority we have found discussing this question is an opinion, dated February 20, 1902, of the Comptroller of the Treasury (8 Dec. Comp. Tr. 547). It is there stated:

> There being in Alaska *no United States consular officers, these laws and regulations have no direct application thereto* [italics ours], but since the appropriation is available for the relief and protection of *shipwrecked* American seamen in Alaska, the method of relief, especially if furnished by or through officers of customs, becomes peculiarly a matter for regulation by the Secretary of the Treasury.
>
> So far as I am aware no instructions have been issued to any United States officers residing in Alaska governing these matters, although it seems evident from the letter you transmit that questions of relief not infrequently come before collectors or deputy collectors of customs, who from their relations to shipping and seamen would most naturally be called upon in regard thereto. Whether such instructions are necessary or

[3] By Section 84 of the Act of July 1, 1902 (32 Stat. 711), customs officers were substituted for consular officers in the administration of laws relating to seamen in the Philippine Islands. By Section 9 of the Act of August 21, 1916 (39 Stat. 527, 529), powers of consular officers in the administration of seamen's laws in the Panama Canal Zone were conferred on the shipping commissioners.

desirable is a matter to be determined by you, but it may be suggested that officers of customs in interesting themselves in behalf of shipwrecked American seamen should be guided as far as possible by the regulations set out in the United States Consular Regulations, which, while prepared for the guidance of consular officers, have wherever applicable the force of law.

* * * * *

6. The answer to the sixth question would seem to be outside the province of this office, being a matter of administrative detail, and being intimately connected with what I have said in the first part of my letter, namely, that while the appropriation for the relief of American seamen has been extended to shipwrecked American seamen in Alaska, the law is silent as to its administration, thus leaving it a matter of executive authority rather than of accounting.

So far as we have been able to ascertain, no specific regulation has been issued. It is a fact, however, that certificates of the general nature of the one here sued upon have been issued by collectors of customs or their deputies in cases where seamen were returned from Alaskan ports to ports of the United States upon their requests, and, save in instances where the return has been made upon a commonly owned vessel, the certificates have been recognized. Apparently no consideration was ever given to the question whether the appropriations were available for the return of shipwrecked sea-

men upon another vessel of the same owner until the matter was first considered by the Comptroller General in a series of opinions [4] which denied that the appropriations were available in such circumstances, as the owner was performing that duty only which the law had placed upon him.

If the ruling of the appellate court below is right, the consideration of any other questions suggested appears unnecessary.

II

Since the question first received consideration, the Comptroller General, the officer charged with the duty of making disbursements from the appropriation set apart by Congress to fulfill the purposes of the statute, has consistently ruled that when the owner of the wrecked vessel returns the members of the crew by another of its vessels, such owner may not be reimbursed from public funds for the cost of such transportation. See 3 Comp. Gen. 148; 4 Comp. Gen. 118; 4 Comp. Gen. 252; 4 Comp. Gen. 390; 4 Comp. Gen. 483; 4 Comp. Gen. 632; 5 Comp. Gen. 623; 6 Comp. Gen. 723; 7 Comp. Gen. 3; 7 Comp. Gen. 363; 8 Comp. Gen. 194. Moreover, the Consular Regulations of the United States,[5] affecting the performance of duties by consuls and

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[4] See page 12, *infra*.

[5] Consular Regulations are issued by the President under authority of R.S., Sec. 1752 (U.S.C., Title 22, Sec. 132), and have the force of law. Cf. *Ex parte Reed*, 100 U.S. 13, 22.

consular agents and containing directions concerning the issuance of certificates for compensation, have recognized the force of these rulings and are in accord with them. See Consular Regulations, March 1928, XVI (Note 2); and see also Consular Regulations, February 1931, XV (Notes 14, 15, 16), XVI (Note 3). The rulings of the Comptroller General and the Consular Regulations determine the limitations within which the controlling appropriations may be disbursed. They determine that the liability of the United States for the transportation of shipwrecked seamen is dependent upon a condition of distress or destitution which cannot exist if the owner of the shipwrecked vessel is in a position to furnish the transportation necessary to repatriate the crew of one of its own shipwrecked vessels.*

Subsequent to the promulgation of these rulings, Congress by the Act of May 7, 1930, c. 227, 46 Stat.

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* While there is testimony in the record that in 1909 or 1910 and in 1918, payments were made to petitioner as compensation for repatriating the crews of ships owned and operated by it (R. 39), there is no finding to this effect. Nor is there any indication that the alleged payments were made with full knowledge of all the facts bearing on the liability of the Government. So far as we are advised, there is no instance wherein there has been recognition of the right of an owner of a vessel on which destitute seamen last served to collect from the United States the expenses of their repatriation; on the contrary, we are informed that in every case, except in a case of established desertion (3 Comp. Gen. 936), the accounting officers of the Government have held that the owner may not recover on such a claim under the seamen relief appropriations.

261 (U.S.C.Sup. VI, Title 46, Sec. 679), reenacted the previously related statutes respecting compensation of vessels for transporting seamen. The consistent construction and administration of these statutes by the officers charged with their application should be regarded, in view of the reenactment of the legislation, as an authoritative interpretation. See *Massachusetts Mutual Life Ins. Co.* v. *United States,* 288 U.S. 269, 273; *Costanzo* v. *Tillinghast,* 287 U.S. 341, 345; *Interstate Commerce Commission* v. *New York, N. H. & H. R. Co.,* 287 U.S. 178, 190.

III

Except for proof only that the *Depere* struck a rock, took water, and was beached, the record is silent as to the cause of the disaster, whether it occurred without fault or negligence on the part of the petitioner or master, as to the reason for removing the crew other than a request to do so, and as to what subsequently happened to the vessel. Reliable shipping publications inform us that the owner immediately following the disaster sent salvage vessels, which promptly floated and towed the *Depere* to Ketchikan, which was the port to which she was bound, when the accident occurred, and later to Seattle, which we assume was her port of destination, where she arrived December 6, 1929. The cargo is said to have been delivered in apparently sound condition and it is to be assumed that freight was earned and paid. The *Depere* was re-

paired and placed in service. She was never abandoned, as her master and chief engineer must have stayed by, for they were not listed among the crew brought to port by the Coast Guard cutter and later returned to Seattle. (See New York Maritime Register for related periods.) In the absence of statutory authority, these circumstances would have required the owner to return the crew at its own expense. *The Dawn,* Fed. Cas. No. 3666; *The Massasoit,* Fed. Cas. No. 9260; *The Elizabeth,* 2 Dods. 403; Kay, Shipmasters and Seamen (1875 ed.), p. 611.

It is urged that Section 4526, R.S., as amended (U.S.C., Title 46, Sec. 593) modifies this general rule. That section reads:

> SEC. 593. *Termination of wages by loss of vessel; transportation to place of shipment.*—In cases where the service of any seaman terminates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled to wages for the time of service prior to such termination, but not for any further period. Such seaman shall be considered as a destitute seaman and shall be treated and transported to port of shipment as provided in sections 678, 679, and 681.

The first sentence of this section first appeared as Section 33 of the Act of June 7, 1872 (c. 322, 17 Stat. 269), and carried forward as Section 4526 of the Revised Statutes. The last sentence was pro-

vided by the Act of December 21, 1898 (c. 28, Sec. 3, 30 Stat. 755). The provisions of Section 593 were passed for the relief of seamen and not the owner of the vessel. In *Brown* v. *Chandler,* Fed. Cas. No. 1998, considering R.S. Sec. 4526, this construction was placed upon it:

> It is evident, from the terms of section 4526 and the section which precedes it, that their principal object was to abolish the ancient rule of the sea which made the right to wages depend upon the earning of freight by the vessel. Section 4525 so enacts in terms. The succeeding section provides that in case of wreck and consequent termination of the seaman's service he shall be paid up to the time of such termination, but not for any further period. We have already seen that by the maritime law the owner was liable for the faults of the master as for his own. Did the statute intend to modify this rule, and pro tanto take away rights from the seaman which under the maritime law, the rigor of which they were mitigating, he would have possessed? If so, we can only gather this intent by construing the statute according to its very letter. And yet we have seen that in the construction of analogous statutes language equally explicit and comprehensive has been held to be subject to exceptions plainly required by justice or the general rules of law. Even with respect to the section under consideration it is not denied that an exception must be admitted in cases where the owner is personally

> in fault. If so, why not also where the fault is that of the master, for whose acts the owner is responsible? The more rational and just view of the intention of congress would seem to be that the two sections were intended to enlarge and not to diminish the rights of the seaman. That so far as the rule of the maritime law which made the right to wages dependent on the earning of freight, that rule was to be abolished or so far modified as to allow him to recover wages for the period of his actual service. But the ancient rule was not to be altered to his disadvantage, and that where by that rule he was entitled not only to his wages earned but to an indemnity for the breaking up of the voyage, his rights were to be preserved intact. All the statutory provisions on this subject would thus be made consistent and harmonious. The seaman would not be entitled to wages where the voyage or vessel is lost by force majeure, except for the service already performed. * * *

The purpose of the amending provisions of the Act of December 21, 1898, is stated in the Committee's Report (House Report No. 1657, 55th Cong., 2d sess., p. 3):

> This section is the present custom in most cases where the shipwrecked seaman depends on the consul to send him home, though in cases where the seaman has wages coming to him he is usually required to turn them in toward meeting the expenses of his passage home. The British law is based on

> the theory that where by an act of God the sailor is left in a foreign land the Government should bring him home. Such is the theory of this section. This section and others are drafted with a view to treating seamen on American vessels as Americans in fact, or as such prospectively through naturalization.

The prior practice had been not to treat the seaman as destitute where he had wages coming to him. The amendment placed the American seaman on a parity with the British seaman by permitting his return without using accrued wages for that purpose. There is nothing appearing that the owner or master was to be relieved of the primary obligation which previously existed. This was the result reached by the District Court. While there are District Court cases holding a contrary view, *The Quaker City,* 290 Fed. 409; *The Helen Fairlanb,* 251 Fed. 412; *The Charles D. Lane,* 106 Fed. 746; *Kelly* v. *Otis,* 23 Fed. 903, we submit that, as the petitioner only performed an obligation which the law imposed upon him, he is not entitled to be reimbursed for his expenses. This apparently is the basis upon which the Comptroller General's ruling was made. We may add that it is also the rule which obtains in Great Britain, and especially is this true when the loss of the vessel is not complete. Kay, Shipmasters and Seamen (1875 ed.), p. 635. "Until 1925 the wages of a seaman ceased on the wreck of his ship, but he was returned to the

United Kingdom at the expense of the shipowner." Scrutton, L. J., in *The Croxteth Hall*, L.R., 1930, P.D., p. 201.

CONCLUSION

It is submitted that the petitioner is not entitled to recover the transportation charges here sued for, and that the judgment of the court below should be affirmed.

Respectfully submitted.

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NOVEMBER 1933.

APPENDIX

STATUTES INVOLVED

Sec. 4578, Revised Statutes, as amended (U.S.C., Title 46, Sec. 679):

> *Transportation of destitute seamen to United States.*—All masters of vessels of the United States, and bound to some port of the same, are required to take such destitute seamen on board their vessels, at the request of consular officers, and to transport them to the port in the United States to which such vessel may be bound, on such terms, not exceeding $10 for each person for voyages of not more than thirty days, and not exceeding $20 for each person for longer voyages, as may be agreed between the master and the consular officer, when the transportation is by a sailing vessel; and said consular officer shall issue certificates for such transportation, which certificates shall be assignable for collection. If any such destitute seaman is so disabled or ill as to be unable to perform duty, the consular officer shall so certify in the certificate of transportation, and such additional compensation shall be paid as the Comptroller General of the United States shall deem proper. Every such master who refuses to receive and transport such seamen on the request or order of such consular officer shall be liable to the United States in a penalty of $100 for each seaman so refused. The certificate of any such consular officer, given under his hand and official seal, shall

be presumptive evidence of such refusal in any court of law having jurisdiction for the recovery of the penalty. No master of any vessel shall, however, be obliged to take a greater number than one man to every one hundred tons burden of the vessel on any one voyage or to take any seaman having a contagious disease.

Act of January 3, 1923, c. 21, Title I, 42 Stat. 1072 (U.S.C., Title 46, Sec. 680):

That hereafter the amount agreed upon between the consular officer and the master of the vessel in each individual case not in excess of the lowest passenger rate of such vessel and not in excess of 2 cents per mile, together with such additional compensation for transporting sick or disabled seamen as is now provided by law, shall in each case constitute the lawful rate for transportation on steam vessels.

Sec. 4579, Revised Statutes, as amended (U.S.C., Title 46, Sec. 681):

Additional allowance for transportation of destitute seamen.—Whenever distressed seamen of the United States are transported from foreign ports where there is no consular officer of the United States, to ports of the United States, there shall be allowed to the master or owner of each vessel, in which they are transported, such reasonable compensation, in addition to the allowance now fixed by law, as shall be deemed equitable by the Comptroller General of the United States.

Sec. 4577, Revised Statutes, as amended (U.S.C., Title 46, Sec. 678):

Subsistence to destitute seamen; return to United States.—It shall be the duty of the

> consuls and vice consuls, from time to time, to provide for the seamen of the United States, who may be found destitute within their districts, respectively, sufficient subsistence and passages to some port in the United States, in the most reasonable manner, at the expense of the United States, subject to such instructions as the Secretary of State shall give. The seamen shall, if able, be bound to do duty on board the vessels in which they may be transported, according to their several abilities.

Appropriation Acts providing relief for shipwrecked American seamen on the coast of Alaska have been enacted annually since 1896. Except in 1922 and 1923, the provisions of these Appropriation Acts with respect to the Territory of Alaska have been substantially the same. The Act making appropriations for the Department of State for the fiscal year ending June 30, 1930, approved January 25, 1929 (c. 102, 45 Stat. 1094, 1098), reads:

> For relief, protection, and burial of American seamen in foreign countries, in the Panama Canal Zone, and in the Philippine Islands, and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, in Porto Rico, and in the Virgin Islands, $70,000.

The similar appropriations made in 1922 and 1923 (c. 204, 42 Stat. 599, 603; c. 21, 42 Stat. 1068, 1072), save for the amount, contain a proviso not appearing in previous or later Appropriation Acts, the Act approved June 1, 1922, reading as follows:

> For relief and protection of American seamen in foreign countries, and in the Panama Canal Zone, and shipwrecked American sea-

men in the Territory of Alaska, in the Hawaiian Islands, Porto Rico, the Philippine Islands, and the Virgin Islands, $220,000: *Provided,* That no part of this appropriation shall be available for payment for the transportation on steam vessels of any seamen in excess of the amount agreed upon between the consular officer and the master of the vessel in each individual case; and hereafter the amount so agreed upon not in excess of the lowest passenger rate of such vessel and not in excess of 2 cents per mile, together with such additional compensation for transporting sick or disabled seamen as is now provided by law, shall in each case constitute the lawful rate.

Section 4526, R.S., as amended (U.S.C., Title 46, Sec. 593):

Termination of wages by loss of vessel; transportation to place of shipment.—In cases where the service of any seaman terminates before the period contemplated in the agreement, by reason of the loss or wreck of the vessel, such seaman shall be entitled to wages for the time of service prior to such termination, but not for any further period. Such seaman shall be considered as a destitute seaman and shall be treated and transported to port of shipment as provided in sections 678, 679, and 681.

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p. 3.

SUPREME COURT OF THE UNITED STATES.

No. 56.—October Term, 1933.

Alaska Steamship Company, Petitioner, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[December 4, 1933.]

Mr. Justice Stone delivered the opinion of the Court.

In this suit, brought under the Tucker Act, 24 Stat. 505, in the District Court for Western Washington, petitioner sought compensation at an agreed rate for the transportation of certain destitute seamen from Ketchikan, Alaska, to Seattle, under the provisions of § 4578 R. S., as amended, 46 U. S. C. § 679. That section imposes on masters of United States vessels homeward bound the duty, upon request of consular officers, to receive and carry destitute seamen to the port of destination at such compensation not exceeding a specified amount as may be agreed upon by the master with a consular officer, and authorizes the consular officer to issue certificates for such transportation, "which shall be assignable for collection". By § 4526 R. S., 17 Stat. 269, as amended December 21, 1898, 30 Stat. 755, 46 U. S. C., § 593, seamen, whose term of service is terminated by loss or wreck of their vessel, are "destitute seamen", and are required to be transported as provided in § 4578.

The demand in the present case was for compensation for the transportation of the crew of the S. S. Depere, owned by petitioner, which had been wrecked on the Alaska coast and for that reason had been unable to complete her voyage. The crew was received and carried to Seattle on petitioner's S. S. Yukon, on certificate of the deputy customs collector of Alaska that he had agreed with the master for their transportation at a specified rate. The Comptroller General refused payment upon the certificate on the sole ground that it was the duty of petitioner to transport to the United States the crew of its own wrecked vessel, and that the Con-

gressional appropriation for the relief of American seamen was not available to compensate the owner for performing that duty. Judgment of the district court dismissing the complaint, 60 F. (2d) 398, was affirmed by the Court of Appeals for the Ninth Circuit, on the ground that the certificate of the deputy collector authorizing the transportation did not satisfy the requirement of the statute that the certificate should be that of a consular officer. 63 F. (2d) 398. This court granted certiorari, — U. S. —.

The government, conceding that the statute by long administrative practice has been construed as authorizing payment for transportation of seamen from Alaska on the certificate of deputy customs collectors, insists that it does not authorize payment to the owner for the transportation of the crew of his own wrecked vessel and that such has been its administrative construction.

1. If the statutory language is to be taken literally, the certificate, which by R. S. § 4578 is authority for the transportation and evidence of the right of the vessel to compensation, must be that of a consular officer. Deputy collectors of customs are not consular officers and there are no consular officers in Alaska. If the right to compensation is dependent upon certification by a consular officer the statutes providing for transportation of destitute seamen can be given no effect in Alaska. But the meaning of this provision must be ascertained by reading it with related statutes and in the light of a long and consistent administrative practice.

Since 1792 the statutes of the United States have made provision for the return of destitute seamen to this country upon suitable action taken by consular officers of the United States.[1] And since 1803 the government has undertaken to compensate for their transportation.[2] Beginning in 1896, Congress has made provision for the relief of American seamen shipwrecked in Alaska in annual appropriation bills for the maintenance of the diplomatic and consular service. The appropriation bill for that year, 29 Stat. 186, and every later one has extended the benefits of the appropriation for the relief of American seamen in foreign countries

[1] Act of April 14, 1792, c. 24, 1 Stat. 254, 256.

[2] Act of February 28, 1803, U. S. Statutes at Large, Vol. 2, 204. The substance of these statutes was carried forward as R. S. §§ 4577, 4578, 4579. These sections were amended by § 9 of the Act of June 26, 1884, c. 121, 23 Stat. 53, 55; as amended, they became §§ 679, 680 and 681 of Title 46, U. S. C.

to "American seamen shipwrecked in Alaska".[3] The appropriation for 1922 and 1923, c. 204, 42 Stat. 599, 603; c. 21, 42 Stat. 1068, 1072, contained the proviso, not appearing in previous acts, that no part of the appropriation should be available for payment for transportation in excess of a specified rate agreed upon by a consular officer and the master of the vessel. The proviso did not appear in subsequent appropriation acts, but by Act of January 3, 1923, 43 Stat. 1072, it was transferred to its proper place in the shipping laws, where it now appears in § 680 of Title 46 of the United States Code. The Act of 1929, 45 Stat. 1028, applicable when the seamen in the present case were transported, appropriated $70,000 "for relief, protection and burial of American seamen in foreign countries, in the Panama Canal Zone, and in the Philippine Islands, and shipwrecked American seamen in the Territory of Alaska, in the Hawaiian Islands, in Porto Rico and in the Virgin Islands". By the amendment of R. S. § 5226 of December 21, 1898, 30 Stat. 755, 46 U. S. C. § 593, it was provided that where the service of a seaman terminates by reason of the loss or wreck of the vessel, "he shall not be entitled to wages for any period beyond such termination of the service and shall be considered as a destitute seaman, and shall be treated and transported to port of shipment", as provided in R. S. § 4578. No exception is made in the case of transportation of seamen from Alaska or other dependencies of the United States.

Thus, from 1896 to the present time, there has been a definite obligation on the part of the government to provide transportation for shipwrecked seamen without reference to the place where shipwrecked, and funds have been annually appropriated for the purpose of carrying out that obligation in the case of seamen shipwrecked in Alaska. As appears from the findings of the trial court, not challenged here, the appropriations have been expended for the transportation of shipwrecked seamen from Alaska, in conformity to a practice established and consistently followed at least since 1900. Certificates for the transportation of shipwrecked seamen have been regularly signed and issued by the collector of customs or the deputy collector in Alaska upon forms provided

[3]Before 1896 the provision in the appropriation bill was stated to be for the relief and protection of American seamen in foreign countries, Acts of 1892 and 1893, 27 Stat. 233, 506; Acts of 1894 and 1895, 28 Stat. 150, 824.

by the Bureau of Navigation of the Department of Commerce. That Bureau, which has a general superintendence over merchant seamen of the United States, 46 U. S. C., §§ 1 and 2, has regularly supplied its customs officials and its agents in Alaska with these forms, with instructions that they were to be used in arranging transportation of shipwrecked seamen to the United States, as provided by the sections of the statute to which reference has been made. The stipulated amounts due for the transportation, as certified, have been regularly paid without objection upon presentation of the certificate to the disbursing officer of the United States.

Courts are slow to disturb the settled administrative construction of a statute long and consistently adhered to. *Brown* v. *United States,* 113 U. S. 568, 571; *United States* v. *Philbrick,* 120 U. S. 52, 59; *United States* v. *G. Falk & Bro.,* 204 U. S. 143, 151. This is especially the case where, as here, the declared will of the legislative body could not be carried out without the construction adopted. That construction must be accepted and applied by the courts when, as in the present case, it has received Congressional approval, implicit in the annual appropriations over a period of thirty-five years, the expenditure of which was effected by resort to the administrative practice, and in amendments by Congress to the statutes relating to transportation of destitute seamen without modification of that practice. *United States* v. *G. Falk & Bro., supra;* compare *United States* v. *Missouri Pacific R. R. Co.,* 278 U. S. 269.

2. The rejection of petitioner's claim by the Comptroller General rests upon the supposed duty of the owner to transport to the home port the seamen of its own wrecked vessel.[4] Diligent search by counsel of the ancient learning of the admiralty has failed to disclose the existence of any such duty. At most, in the absence of statutory command or of stipulations in the shipping articles providing otherwise, the rights of the seamen after shipwreck, preventing the completion of the voyage, appear to have been limited to wages payable from freight earned on the voyage or to wages or salvage from the vessel they have helped to

[4]Similar rulings appear to have been made in the following cases: 3 Comptroller General (1924) 575; 4 *Id.* (1924) 118, 252, 483, 542; *Id.* (1925) 632; 5 *Id.* (1926) 623; 6 *Id.* (1927) 723; 8 *Id.* (1928) 211.

save.[5] It is unnecessary for us to consider to what extent these rights have survived the statutes regulating the duties of the owner toward the seamen or what bearing they may have on the duty of the owner to transport the seamen. For there is no finding and no evidence in the present case that the wrecked vessel had earned freight on her voyage or had been salvaged either with or without the aid of her seamen. Under those statutes we think it plain that no duty is imposed on the owner to provide transportation for seamen of his own wrecked vessel, and that the statutory undertaking of the government is not upon condition that destitute seamen shall be transported upon vessels other than those of the owner of the wrecked vessel.

There are numerous instances in which the statutes of the United States specifically impose on the master the duty to provide seamen with transportation if he does not secure employment for them on another vessel.[6] But there is no statute imposing any duty on the vessel or owner to provide transportation for seamen who may be shipwrecked or who are discharged because incapacitated for further service. See R. S. § 4581, 46 U. S. C., § 683. The statutes terminate seamen's right to wages with the termination of their service by the shipwreck, and without qualification impose on the government the obligation to transport them. It cannot be supposed that the performance of this obligation which since the early days of the government has been treated by Congress as a public duty, was intended to be conditional upon the ability of seamen, left destitute in a distant land, to induce the ship owner to transport them in performance of a supposed duty which the statute neither imposes nor mentions.

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[5]See The Dawn, 7 Fed. Cas. 3666; The Massasoit, 16 Fed. Cas. 9260; Brown v. Chandler, 4 Fed. Cas. 1998; The Lady Durham, 3 Hag. Adm. 196; Molloy, De Jure Maritimo et Navali, 1744, 249; Abbott, Laws of Shipping, Am. Ed. by Justice Story, 1854, 780. But see The Elizabeth, 2 Dods. 403, 412.

[6]The following instances may be noted: Where a seaman leaves a vessel because she was previously sent to sea in an unseaworthy state by neglect or design of the owner, R. S. § 4561, 18 U. S. C. § 658; where a seaman is discharged because his vessel is sold abroad, R. S. § 4582, 46 U. S. C. § 684; where a seaman leaves the vessel because the voyage is continued contrary to agreement, or because the vessel is badly provisioned or unseaworthy, or because he had been subjected to cruel treatment, R. S. § 4583, 46 U. S. C. § 685; see also R. S. § 4522, 46 U. S. C. § 703.

The Department of Commerce, not the Comptroller General, is charged with the administration of the statute, 4 Comptroller General Rep., 252, 253, and its administrative practice should be followed if thought to be controlling. But in any case, there is no ambiguity or uncertainty in the statute with respect to the point urged by the government, and, in carrying it out as written, there is no administrative difficulty which would call for construction. The rulings of the Comptroller General rest upon a proposition so plainly contrary to law and so plainly in conflict with the statute as to leave them without weight as administrative constructions of it. *United States* v. *Missouri Pacific Railroad Co., supra.*

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.